United States Court of Appeals for the Second Circuit



APPENDIX

76-1361

IN THE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



THE UNITED STATES OF AMERICA

•

Appellee

ALEKLID C. MATHIAS

Appellant

APPENDIX FOR THE APPLLIANT

THILLMAN & LALIME Afterbeys for Appellant Office & Post Office Aldress 1710 Liberty Bank Building Buffalo, New York 14202



PAGINATION AS IN ORIGINAL COPY

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Superseded by CR-75-13

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

CR-74-231 John T. Curtin

THE UNITED STATES OF AMERICA

-VS-

ALFRED C. MATHIAS
(Cts. 1,2,3,4,5)

JOSEPH LOTT

(Cts. 1.6,7,8)

Conspiracy to commit offenses against the United States by embezzling and misapplying funds while employed by the City of Buffalo in a federally funded agency, in violation of Title 18, U. S.C. Section 371 (Ct. 1); willfully and knowingly obtaining money by making a false entry while employed by the City of Buffalo in a federally funded agency, in violation of Title 18, U.S.C. Section 1001 (Cts. 2,3,4,5); willfully and knowingly obtaining money in a federally funded agency, in violation of Title 18, U.S.C. Section 1001 (Cts. 6,7,8)

Offenses: 7/73 - 9/73

8 cts.

Statistical Record

J.S. 2 mailed Sept. 5, 1974

Clerk

J.S. 3 mailed

Marshal

Violation

Docket Fee

Title 18 Section 371, 1001

DATE

PROCEEDINGS

August 28, 1974

Filed Indictment

August 28, 1974

J. S. 2 made

August 29, 1974

Proceedings before the Magistrate - Attorney Michael J. Stachowski entered not guilty plea for Defendant, LOTT. Motions are to be filed by 9/17; Government is to respond by 9/24; Argument scheduled for 10/1/74. Bail for Defendant, LOTT - \$5,000 recog. bond. Arraignment for ALFRED MATHIAS was adjourned until he can be returned to Buffalo. His Attorney is James L. Lalime.

August 30, 1974

Filed Magistrate's \$5,000 recog. bond for Defendant, LOTT.

- September 4, 1974 Proceedings before the Magistrate Mr. Lalime, Attorney for the Defendant, MATHIAS, has advised the U. S. Attorney's office that the Defendant will surrender himself on 9/5/74.
- September 10, 1974 Filed court stenographer's minutes of proceedings of 8/29/74.
- September 10, 1974 Proceedings before the Magistrate for Defendant, ALFRED C. MATHIAS Defendant pled hot guilty. Defendant's motions are to be filed by 10/1/74. Government is to respond by 10/15. Argument of motions on 10/22/74. Defendent released on \$5,000 personal recog. bond.
- September 10, 1974 Filed Magistrate's \$5,000 personal recog. bond for Defendant, MATHIAS.
- September 12, 1974 Filed court stenographer's minutes of proceedings of 9/10/74.
- September 17, 1974 Proceedings before the Magistrate (Re: JOSEPH LOTT) No appearances for Defendant. Government advised the court that Defendant is to plead before Judge Curtin on 9/23/74.
- September 19, 1974 Filed Defendant, ALFRED C. MATHIAS' notice of motion for an Order directing disclosure, production, etc. Returnable 10/1/74 before the Magistrate.
- September 23, 1974 Filed Government's response to Defendant, ALFRED C. MATHIAS' motion.
- September 23, 1974 RE: JOSEPH LOIT; Plea adjourned to 10/7/74.
- September 24, 1974 Proceedings before the Magistrate Motions have been filed for Defendant MATHIAS and answered by the Government. Argument of motions rescheduled for 10/1/74 from 10/22, if this is agreeable to defense counsel. Defendant, LOTT is scheduled to appear before Judge Curtin.
- September 30, 1974 RE: JOSEPH LOTT change of plea. Adjourned to 10/7/74.
- October 7, 1974 Defendant, JOSEPH LOTT, entered a plea of guilty to counts 1 and 7; sentencing set for 11/11/74.
- October 22, 1974 Proceedings before the Magistrate No appearance for the Defendant, ALFRED C. MATHIAS. Government advised that discovery is complete; Files to go to Judge Curtin.
- November 11, 1974 RE: JOSEPH LOTT. For sentenc. Adjourned to 11/25.
- November 18, 1974 RE: ALFRED C. MATHIAS, Case ready for trial, pretrial scheduled for 3:30 p.m. on 12/2/74.
- November 22, 1974 Filed Government's motion to move action for trial.
- November 25, 1974 Sentence adjourned to 12/9/74 for Defendent, LOTT.

December 9, 1974 Sentencing deferred indefinitely. (Re: Defendant LOTT) December 16, 1974 Status - Adjourned to 12/23/74. Pecember 23, 1974 Status report Re: Defendant, MATHIAS, adjourned to 1/13/75. January 13, 1975 Status report Re: Defendant, MATHIAS, adjourned to 2/10/75.	1
December 23, 1974 Status report Re: Defendant, MATHIAS, adjourned to 1/13/75. January 13, 1975 Status report Re: Defendant, MATHIAS, adjourned to 2/10/75.	1
January 13, 1975 Status report Re: Defendant, MATHIAS, adjourned to 2/10/75.	1
	1
	1
April 15, 1975, Proceedings before the Magistrate - Attorney James L. Lalime for Defendant, MATHIAS to make motion to dismiss the indictment in CR-75-13 for ALFRED C. MATHIAS, and proceed on original indictment CR-74-231. Case to go to Judge Curtin.	1
May 27, 1975 Filed Defendant's Notice of Motion for an Order dismissing indication for the failure of the Government to bring this case to trial, returnable 5/27/75 (RE: MATHIAS.)	
May 27, 1975 Defendant, JOSEPH LOTT, present with counsel, enters a plea of guilty to count 1 in CR-74-231. Sentence is deferred until 7/14 Court schedules meeting 6/2 at 2:00 p.m in U. S. vs MATHIAS.	
June 2, 1975 Meeting with court adjourned to 6/9.	
June 5, 1975 Filed Government's responce to Defendant's motion to dismiss ind ment for want of speedy trial under the sixth amendment.	ct-
June 9, 1975 Pre-trial conference. No appearance for Defendant. Court will cide pending motic.	e-
June 16, 1975 Filed Order that the motion of Defendant MATHIAS, to dismiss the indictment for lack of speedy trial is denied CURTIN, J.	
July 2, 1975 Filed subpoena - Marcella King. Served 6/30/75.	
August 6, 1975 Pre-trial - ALFRED C. MATHIAS - held case ready for trial.	
October 2, 1975 Filed subpoena - JOSEPH LOTT served 9/30/75; filed subpoena DT Neale Peck, served 9/30/75.	
October 1, 1975 Filed 3 subpoenas for Marcella King, Robert Parker, and David Edall served on 9/29/75. Filed 3 subpoenas for Clayton Silver, Da Tillman, returned, no service.	
October 6, 1975 Filed two subpoenas to testify for Clayton Silver and Jerome Jaserved on 10/1/75.	es,
October 14, 1975 Filed subpoena - David Tillmar served 10/1/75.	
October 17, 1975 Filed subpoena - David Tillman, issued on 9/30/75, ret. unexecut see entry for 10/14/75 for service of this subpoena.	d
November 3, 1975 Filed letter from Attorney James L. Lalime dated October 30.75 - the court, for a immediate trial for Defendant, MATHIAS, etc.	to

M	lay 11, 1976	Government moves case ready for trial before Judge Curtin and jury at Buffalo, New York for Defendant MATHIAS, whereupon jury is enpanelled; trial is adjourned until 5/13/76.
M	lay 13, 1976	Trial continued from 5/11/76 with same appearances and jury; trial begins, witnesses sworn in; trial is adjourned until 5/14/76.
M	May 13, 1976	Filed subpoena - Buffalo Savings Bank, served 5/10/76.
N	May 14, 1976	Trial continues from yesterday with the same appearances and jury. A stipulation is read into evidence. Government rests. Trial is adjourned until 5/17/76 at 2:00 p.m.
1	May 14, 1976	Filed five subpoenas - Calyton Silver, Jerome James, served 5/11/76. Joseph Lott, Marcella King, Walter J. Miller, returned unserved.
J	May 17, 1976	Filed steno's transcript of proceedings before Judge Curtin and jury testimony of witness, Joseph Lott.
1	May 17, 1976	Trial continues from 5/14/76 with the same appearances and jury. Motion by the Defendant to dismiss the indictment and for a judgment of acquittal on all four counts of the indictment. Motion denied. Trial is adjourned until 5/18/76.
1	May 18, 1976	Trial continues from 5/17/76 with the same appearances and jury. Evidence is closed. Trial is adjourned until 5/19/76.
1	May 19, 1976	Trial continues from 5/18/76 with same appearances and jury. Court rules on requests to charge. The jury retires to deliberate upon their verdict. Jury retires to their homes for the night to return tomorrow morning to continue their deliberation; Trial is adjourned until tomorrow morning.
	May 20, 1976	Filed subpoena - David Tillman, returned unserved.
	May 20, 1976	Jury returns to continue deliberations from yesterday. Jury returns with the following verdict: Counts 1,2, and 5 - guilty. Counts 3 and 4 the jury cannot agree on a verdict. Sentence is deferred until 6/28/76. Bail to continue. Jury is discharged.
	June 2, 1976	Filed subpoena - Robert Parker, returned unserved.
	June 28, 1976	For sentence. ALFRED C. MATHIAS is sentenced as follows: Count 1, imposition of sentence is suspended, and Defendant is placed on probation for a period of 3 years, and fine of \$500, payable in 6 months Count 2, imposition of sentence suspended, and Defendant is placed or probation for a period of 3 years and fine of \$500 payable in 6 month Count 5, imposition of sentence is suspended, and the Defendant is placed on probation for a period of 3 years, and fine \$500, payable in 6 months. Sentence on counts 2 and 5 to run concurrently with

sentence imposed on Court 1 -- CURTAL, J.

in 6 months. Sentence on counts 2 and 5 to run concurrently with

July 2, 1976 Filed judgment and order of probation for Defendant, MATHIAS. Filed Defendant MATHIAS' notice of appeal. July 15, 1976 July 19, 1976 For sentence. On Count 1 of the indictment, Defendant LOTT is sentenced as follows: imposition of sentence is suspended, and the Defendant is placed on probation for a period of 2 years. Restitution is to be made. Counts 6, 7 and 8 of the indictment are dismissed. CURTIN, J. July 21, 1976 Filed notice of motion for an extension of time to perfect an appeal. So ordered late filinf permitted. JUDGE CURTIN. July 22, 1976 Notice of appeal, form A, Financial affidavit, and copy of affidavit mailed to CCA. 7/23/76 Filed Judgment and Order of Probation for Defendant, LOTT

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-vs-

ALFRED C. MATHIAS JOSEPH LOTT MARCH, 1974 SESSION

No. 74-231

Vio. Title 18, United States Code, Sections 1001 and 371

The Grand Jury Charges:

- 1. The Defendant, ALFRED C. MATHIAS, during the period in or about the month of July, 1973, and through and including in or about the month of September, 1973, was an Assistant Bookkeeper at 585 Michigan Avenue for the Mayor's 1973 Summer Youth Program.
- 2. The Defendant, JOSEPH LOTT, during the same period of time, was an Intake Officer at 585 Michigan Avenue for the Mayor's 1973 Summer Youth Program.
- 3. The Mayor's 1973 Summer Youth Program, at all times mentioned in this indictment, was established by the Buffalo Model Cities Agency to recruit underprivileged youths for summer employment with a budget of five hundred twenty thousand dollars (\$520,000.00) which was made available through the Grant Agreement between the United States Department of Housing and Urban Development and the City of Buffalo, New York dated July 31, 1970 and as thereafter amended and pursuant to Title I of the Demonstration Cities and Metropolitan Development Act of 1966 (Public Law 89-754) as amended (Title 42, United States Code, Sections 3301 through 3374).
- 4. During the period in or about the month of July, 1973, through and including in or about the month of September, 1973, the exact dates being unknown to the Grand Jury, in the Western District of New York,

ALFRED C. MATHIAS

and

JOSEPH LOTT

the Defendants in this indictment, knowingly, willfully and unlawfully did conspire,

combine, confederate and agree with each other, and with unknown others, to defraud the United States of America, that is to say, Defendants ALFRED C. MATHIAS and COSEPH LOTT did conspire, combine, confederate and agree to hamper, hinder, frustrate, defeat, impair and impede by craft, trickery, deceit and dishonest and unlawful means; including the misapplication, stealing, embezzlement and obtaining by fraud; funds made available pursuant to the previously mentioned Federal Grant Agreement by and through the falsification and concealment of material facts by a scheme to frustrate the lawful and legitimate functions, operations and purposes of the United States Department of Housing and Urban Development, in the administration implementation and accomplishment of the objectives o the Mayor's 1973 Summer Youth Program.

All in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of the conspiracy and in order to accomplish its objectives and to prevent discovery, the Defendants

ALFRED C. MATHIAS

and

JOSEPH LOTT

in the Western District of New York, did commit among others the following overt acts:

- 1. In or about the month of August, 1973, Defendant, ALFRED C. MATHIAS met with Defendant, JOSEPH LOTT at Buffalo, in the Western District of New York and performed acts which concealed and caused to be hidden the fact that David Tillman did not work for the Model Cities Mayor's 1973 Summer Youth Program and which caused check no. 3100090, in the amount of eighty-seven dollars and nine cents (\$87.09) to issue.
- 2. On or about August 6, 1973, the Defendant, ALFRED C. MATHIAS gave check no. 3100090, in the amount of eighty-seven dollars and nine cents (\$87.09) to JOSEPH LOTT at Buffalo, in the Western District of New York.

- 3. On or about Sertember 7, 1973 Defendant, JOSEPH LOTT deposited check no. 3100090, made payable to David Tillman, 463 Watson, Buffalo, New York dated August 6, 1973, in the amount of eighty-seven dollars and nine cents (\$87.09), into his bank account at the Niagara Permanent Savings and Loan Association.
- 4. The Grand Jury realleges the acts described in Counts II through VII of this indictment as overt acts and incorporates them herein by reference.

All of the above being in violation of Title 18, United States Code, Section 371.

COUNT II

The Grand Jury Further Charges:

In or about the week of September 2, 1973, in the Western District of New York, at Buffalo, New York, the Defendant

ALFRED C. MATHIAS

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant, ALFRED C. MATHIAS while employed with the Mayor 1973 Summer Youth Program in his capacity as Assistant Bookkeeper did enter and cause to be entered the name of David Tillman in the books of the Program and thus, causing a check made payable to David Tillman to issue in the amount of two hundred and seventeen dollars and seventy two cents (\$217.72) for the pay date September 11, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact that David Tillman did not work for and was not entitled to the compensation from the Mayor's 1973 Summer Youth Program.

COUNT III

The Grand Jury Further Charges:

During the period in or about the week of July 15, 1973 through and including the week of August 5, 1973 in the Western District of New York, at Buffalo, New York the Defendant

ALFRED C. MATHIAS

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant ALFRED C. MATHIAS while employed with the Mayor's 1973 Summer Youth Program in his capacity as Assistant Bookkeeper did enter and cause to be entered the name of Jerome James in the books of the Program and thus, causing two (2) checks made payable to Jerome James to issue in the amount of thirty dollars and thirteen cents (\$30.13) for the pay date July 23, 1973 and in the amount of sixty dollars and twenty-six cents (\$60.26) for the pay date August 6, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact that Jerome James did not work and was not entitled to the compensation from the Mayor's 1973 Summer Youth Program.

g.

COUNT IV

The Grand Jury Further Charges:

In or about the week of August 12, 1973, in the Western District of New York, at Buffalo, New York, the Defendant

ALFRED C. MATHIAS

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant ALFRED C. MATHIAS while employ d with the Mayor's 1973 Summer Youth Program in his capacity as Assistant Bookkeeper did enter and cause to be entered the name of Clayton Silver in the books of the Program and thus causing a check made payable to Clayton Silver to issue in the amount of eighty-seven dollars and nine cents (\$87.09) for the pay date August 17, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact Clayton Silver did not work for and was not entitled to the compensation from the Mayor's 1973 Summer Youth Program.

COUNT V

The Grand Jury Further Charges:

In or about the week of September 2, 1973, in the Western District of New York, at Buffalo, New York, the Defendant

ALFRED C. MATHIAS

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant, ALFRED C. MATHIAS while employed with the Mayor's 1973 Summer Youth Program in his capacity as Assistant Bookkeeper, did enter and cause to be entered the name of Marcella King in the books of the Program and thus causing a check made payable to Marcella King to issue in the amount of eighty-seven dollars and nine cents (\$87.09) for the pay date September 4, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact that Marcella King did not work for the Mayor's 1973 Summer Youth Program for that period and was not entitled to compensation from it.

COUNT VI

The Grand Jury Further Charges:

In or about the week of July 29, 1973, in the Western District of New York, at Buffalo, New York, the Defendant

JOSEPH LOTT

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant, JOSEPH LOTT while employed with the Mayor's 1973 Summer Youth Program in his capacity as Intake Officer at 585 Michigan Avenue did present and cause to be presented the name of Melinda Marshall to the Bookkeeping Department of the Program and thus causing a check made payable to Melinda Marshall to issue in the amount of eighty-seven dollars and nine cents (\$87.09) for the pay date August 6, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact that Melinda Marshall did not work for and was not entitled to the compensation from the Mayor's 1973 Summer Youth Program.

COUNT VII

The Grand Jury Further Charges:

In or about the week of July 29, 1973, in the Western District of New York, at Buffalo, New York, the Defendant

JOSEPH LOTT

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant, JOSEPH LOTT while employed with the Mayor's 1973 Summer Youth Program in his capacity as Intake Officer at 585 Michigan Avenue did present and cause to be presented the name of David Tillman to the Bookkeeping Department of the Program and thus causing a check made payable to David Tillman to issue in the amount of eighty-seven dollars and nine cents (\$87.09) for the pay date August 6, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact that David Tillman did not work for and was not entitled to the compensation from the Mayor's 1973 Summer Youth Program.

COUNT AIII

The Grand Jury Further Charges:

In or about the week of September 2, 1973, in the Western District of New York, at Buffalo, New York, the Defendant

JOSEPH LOTT

in a matter within the jurisdiction of a department and agency of the United States, that is, the United States Department of Housing and Urban Development, unlawfully, knowingly and willfully did conceal and cause to be concealed material facts, that is to say, the Defendant, JOSEPH LOTT while employed with the Mayor's 1973 Summer Youth Program in his capacity as Intake Officer at 585 Michigan Avenue did present and cause to be presented the name of Marcella King to the Bookkeeping Department of the Program and thus causing a check made payable to Marcella King to issue in the amount of forty-three dollars and fifty-four cents (\$43.54) for the pay date September 11, 1973 which the Defendant obtained and converted to his own use; thereby concealing the fact that Marcella King did not work for and was not entitled to the compensation from the Mayor's 1973 Summer Youth Program.

All in violation of Title 18, United States Code, Section 1001.

JOHN T. ELFVIN United States Attorney THE UNITED STATES OF AMERICA

- V5 -

ALFRED C. MATHIAS

NOTICE OF MOTION

NO. CR-74-231 SUPERSEDING INDICT: MENT NO. CR75-13

S 1 R S:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of JAMES L. LALIME. ESQ., duly sworn on the 4th day of March 1975, and on all the proceedings heretofore had herein. The undersigned will move this Court at the United States Courthouse, Buffalo, New York, on or before the 10th day of March, 1975, for an Order directing the Government:

- 1. To disclose any and all statements made by co-defendants concerning the guilt or innocense of the Defendant, ALFRED C. MATHIAS pursuant to Rule 16 of the Federal Rules of Criminal Procedure.
- 2. To furnish copies of any and all confessions, admissions and/or statements made by any co-defendant to the United States Attorney or other law enforcement agents at any time or place which incriminate or exculpate the Defendant, ALFRED MATHIAS, and whether they have been reduced to writing or not.
- 3. Any and all scientific reports concerning handwriting samples afforded the Government voluntarily by the Defendant, ALFRED C.

 MATHIAS, prior to Grand Jury Indictment of Case no. Cr-74-231,
 and compared with the handwriting specimens on the additional charge in the Superseding Indictment of the signatures appearing on check no. 3700020, belonging to DAVID TILLMAN in the amount of FORTY THREE DOLLARS AND FIFTY FOUR CENTS (\$43.54).

missing Indictment no. Cr-74-231, and the Superseding Indictment No. Cr-75-13 for the unreasonable delay in bringing this case to trial all in violation of the Sixth Amendment of the United States Constitution.

Further, it will be moved, my counsel for the Defendant in this action, that the matter of ALFRED C. MATHIAS, be severed from the action of JOSEPH LOTT, and any and all such relief to this Court deemed just and proper for the orderly disposition of this case.

DATED: BUFFALO, NEW YORK March 6, 1975

Yours, etc.

THIELMAN & LALIME
Attorneys for Defendant
Office & Pose Office Address
1710 Liberty Bank Building
Buffalo, New York 14202

TO: EDMUND F. MAXWELL
United States Magistrate
U.S. Courthouse
68 Court Street
Buffalo, New York 14202



THE UNITED STATES OF AMERICA

-vs-

ALFRED C. MATHIAS

AFFIDAVIT

NO. CR-74-231

SUPERSEDING INDICTMENT

NO. CR-75-13

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

JAMES L. LALIME, ESQ., being duly sworn,

deposes and says:

- That deponent is an attorney at law duly licensed to practice before the Courts of the State of New York, and maintains an office for such practice at 1710 Liberty Bank Building, Buffalo, New York
- 2. That your deponent is the attorney for the Defendant herein and as such, makes this Affidavit in support of the motion attached hereto.
- 3. That this motion is made for an Order directing the Government to furnish to the Defendant the items set forth in the Notice of Motion, herein, including scientific reports concerning handwriting exemplars afforded the Government by the Defendant, prior to the Indictment of Cr-74-231 because it is believed that the Government used these exemplars for analysis of the additional check in the Superseding Indictment.
- 4. On information and belief, the deponent has every indication that JOSEPH LOTT, a co-defendant in this case has pled guilty and in doing so, has given statements which could have Brady material in them and yet opponent believes that said statements are necessary to the defense of Alfred C. Mathias, a co-defendant in this case.
- 5. That because of said statements given by the co-defendant

it is believed that a fair and just tric, could be impossible if the co-defendant, JOSEPH LOTT, was allowed to enter his statement on the record at a joint trial, therefore justice would best be served by a severence of this matter.

- 6. The deponent believes that the Superseding Indictment should be dismissed in view of the fact that the defendant volunteered testimony before the Grand Jury and the information that the United States Attorney has presented in the Superseding Indictment was available at that time and the questions were not directed to the Defendant pertaining to that additional charge.
- 7. That the deponent believes that the defendant's constitutional rights to a speedy trial have been violated in view of the fact that the deponent has repeatedly asked for an immediate trial on this matter and the Government has offered continual delays. This has prejudiced the Defendant in obtaining employment because of this Indictment hanging over his head causing job applications to be held in obeyance until a clarification of this matter is had in the Federal District Court.
- 8. That the deponent believes that the Superseding Indictment should be dismissed in the interests of justice in view of the fact that this is a continual delay by the Government in violation of the Defendant's constitutional rights under the Sixth Amendment to a Speedy trial.
- 9. Any and all records in the possession of the Government concerning the Defendant's bank account and more specifically concerning the additional check of \$43.54, which is the additional charge in the Superseding Indictment.
- 10. That said motion is made in good faith and not for the purpose of delay. That the requested items are in the possession of

Court Order.

11. That said items requested herein are necessary to the Defendant for the preparation of his defense to the charges herein and a denial hereof would constitute a denial of due process and would be contrary to the interests of justice.

WHEREFORE, deponent respectfully requests that the relief sought herein be in all respects granted.

JAMES L. LALIME.

Sworn to before me this

4 th day of March, 1975

JUDITH M. HALLADAY

Notary Public, State of New York
Qualified in Eric County

My Cummission Expires March 30, 19 78

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

NOTICE OF MOTION

-V5-

CR 74-231

ALFRED C. MATHIAS

SIRS:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of JAMES L. LALIME, ESQ., duly sworn to the 23rd day of May, 1975, and upon the Affidavit of ALFRED C. MATHIAS, duly sworn to the 23rd day of May, 1975, and upon all the proceedings heretofore had herein, the undersigned will move this Court for an Order dismissing said criminal complaint for the failure of the Government to reasonably bring this case to trial, all in violation of the Sixth Amendment of the United States Constitution, together with any other relief as to this Court may seem just and proper.

LATED: BUFFALO, NEW YORK May 23, 1975

Yours, etc.

THIELMAN & LALIME
Attorneys for the Defendant
Office & Post Office Address
1710 Liberty Bank Building
Buffalo, New York 14202

TO: JOHN T. CURTIN
District Court Justice
United States Courthouse
68 Court Street
Buffalo, New York 14202

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

-vs-

AFFIDAVIT

CR 74-231

ALFRED C. MATHIAS

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO)

JAMES L. LALIME, ESQ., being duly sworn,

deposes and says:

- That deponent is an attorney at law duly licensed to practice before
 the Courts of the State of New York, and maintains an office for such practice
 at 1710 Liberty Bank Building, Buffalo, New York.
- 2. That your deponent is the attorney for the Defendant herein, and as such, makes this Affidavit in support of the motion attached hereto.
- 3. That on April 15, 1975 certain motions were prepared and heard before the United States Magistrate, Edmund Maxwell, to dismiss the superseding indictment that the United States Attorney had laid against the Defendant, Alfred C. Mathias. That the Government voluntarily withdrew their superseding indictment No. CR-75-13 without argument, and at that time, the Defendant, through your deponent, again, as your deponent has previously done, demanded an immediate trial of this matter.
- 4. That your deponent has, on several occasions before the Honorable John J. Curtin, moved for an immediate trial of this matter, stating that the Defendant was completely ready at that stage to proceed in his defense of the accusations male in the said indictment.

- 5. That since the ofiginal indictment on this matter, the Defendant, who is a college graduate, has been unable to obtain employment because of the uncertainty of the charges in this matter. Several applications have been left in abeyance, pending the outcome of these charges.
- 6. That further, your deponent states that some of the witnesses that the Defendant would use at trial have no fixed rocts in the Buffalo area and are liable, if they have not already done so, to leave the Buffalo area for parts unknown.
- 7. That your deponent verily believes that the Defendant's constitutional rights to a speeding trial have been violated, in view of the above stated, and that the Court should grant any and all relief requested by the Defendant because of these prejudicial delays.

JAMES L. LALME

Sworn to before me this 23rd day of May, 1975.

JOHN C. WAGNER

Notary Public, State of New York

Qualified in Ene County

Commission Expires March 30, 19/6

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-vs-

AFFIDAVIT

CR-74-231

ALFRED C. MATHIAS

STATE OF NEW YORK)
COUNTY OF ERIE)
CITY OF BUFFALO

ALFRED C. MATHIAS, being duly sworn, deposes

and says:

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- That your deponent has read the Affidavit of his attorney, JAMES L.
 LALIME, duly sworn to the 23rd day of May, 1975, and agrees in every aspect with said Affidavit.
- 2. That this matter has been pending for over a year, during which time your deponent's Bachelor of Science Degree in Business Administration has not been put to use because of the uncertainty of his position.
- 3. That it has been impossible for your deponent to secure a job of any nature and has had to depend on relatives and friends for support during this lengthy delay.
- 4. That your deponent has attempted to contact two or three individuals that worked on the same program on which this indictment centers around, and has been unable to do so because of their relocation to parts unknown.

WHEREFORE, your deponent requests that this Court offer such relief as it deems reasonable under the circumstances because of the Government's continual delay in this matter.

ALPRID C. MATHIAS

Sworn to before me this

23rd day of May, 1975.

Notary Public, State of New York

Commission Commission and 30 10 26

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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.

"!aintiff :

-v- : CR 74-231

ALFRED C. MATHIAS, et al.,

Defendants :

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS INDICTMENT FOR WANT OF SPEEDY TRIAL UNDER THE SIXTH AMENDMENT

PRELIMINARY STATEMENT

On August 28, 1974 indictment number 74-231 was returned against defendant Alfred C. Mathias and Joseph Lott. Thereafter, a warrant was issued for defendant's arrest and upon surrender his arraignment was held before Magistrate Edmund F. Maxwell before whom pre-trial discovery proceedings subsequently were completed.

Co-defendant Joseph Lott entered a plea of guilty to indictment number 74-231 on October 7, 1974.

The Government's Notice of Readiness as against defendant Mathias was filed on November 22, 1974. Superseding indictment number 75-13 was returned against defendants Mathias and Lott on January 16, 1975. Shortly thereafter on February 13, 1975 the Government's Notice of Readiness as to defendant Mathias was filed. On May 26, 1975, co-defendant Joseph Lott again entered his plea of guilty to indictment number 74-231 and the Government again advised that it was electing to proceed on that indictment. Currently, both indictment numbers 74-231 and 75-13 are outstanding as against both defendants.

In defendant Mathias' present motion before this Court for dismissal of indictment number 74-231 for want of speedy trial in light of the Sixth Amendment to the United states Constitution, he urges lengthy delay and the possibility that some of his witnesses may leave the Buffalo area prior to the trial of the instant case and thus result in prejudice to him. Clearly, the delay in

and further mere conjecture and unsupported allegations of possible prejudice are insufficient under existing case law for purposes of dismissal of an indictment against defendant.

GOVERNMENT'S LEGAL AUTHORITY

In light of the aforementioned and in light of the United States Supreme Court's directive in <u>Barker v. Wingo</u>, 407 U.S. 514, 530 (1972) to assess "[1]ength of delay, the reason for the delay, the defendant's assertion of his right and prejudice to the defendant", the motion of defendant Mathias for dismissal of the indictment on Sixth Amendment grounds should be denied.

The defendant conjectures and speculates that prejudice may result to him in that certain witnesses may not be available at time of trial. Nothing other than the general affidavit of his attorney and of himself is offered in support thereof. Furthermore, the "lengthy"

delay complained of approximates only nine months. This Circuit routinely has countenanced delay of substantially longer times where they are not of an intentional nature for a specific tactical purpose and where, as here, there exists a failure by a defendant to satisify certain of the other variables illucidated in Barker and which thereby militate against the conclusion that the constitutional right to a speedy trial was violated. See.e.g., United States v. Fasanaro, 471 F.2d 717 (2nd Cir. 1973) (per curiam) (over four years); United States v. Saglimbene, 471 F.2d 16 (2nd Cir. 1972), Cert. denied, 411 U.S. 966 (1973) (six years).

WHEREFORE, for the foregoing reasons, defendant's motion to dismiss indictment should be denied.

DATED: Buffalo, New York, June 4, 1975.

Respectfully submitted,

RICHARD J. ARCARA

United States Attorney

Western District of New York

Office and Post Office Address

502 United States Courthouse

Buffalo, New York 14202

WILLIAM M. SKRETNY
Assistant United States Attorney
of Counsel

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-vs-

CR-74-231 CR-75-13

ALFRED C. MATHIAS JOSEPH LOTT,

Defendants

moved for dismissal because his client has not been afforded a speedy trial. The court has examined the docket and the record in this case and it is clear that any delay occasioned was to prepare the case for trial. The court can find no delay caused by the government which requires dismissal within the rules. The motion of defendant is denied. These cases are on the trial calendar and will be called upon short notice for trial.

So ordered.

JOHN T. CURTIN United States District Judge

October 30, 1975

Monorable Justice John T. Curtin U. S. District Court U. S. Court Louse Puffalo, New York 12202

Dear Judge Curtin:

PU: U. S. vs Alfred Mathias CR-74-231

This is to confirm a conversation that I had with the Clerk of the Court, Pobert White, on October 29th, 1975, wherein I askel at that time that the first opportunity of the Court. Yr. Nathias the is a college gradiente, has been of Creal several positions since this case was instituted in the Federal Court in May of 1974. However, because of the uncertainty of the outcome of this patter, he has been mable to obtain employment.

Yesterday his sister, Thelma Thomas, colled this office to inform us that her brother, Alfred Mathias, had been given an opportunity with the Human Service Center as a program coordinator, through the City of Buffalo school system. Again, the spector of this case hanging over his head has caused delay in this appointment. His unemployment has long since run out and because of his college education, his reluctant to seek welfare.

'y client and this office would appreciate if the Court would take the aforementioned into consideration and put this down for the earliest possible

Very truly yours,

THIELMAN & LALIME

JLL/jmh 1529-A

James L. Lalime



- BY MR. SKRETNY: 1
- Do you know Marcella King?
- Yes, I know Marcella King. 3 A.
- And do you know whether or not Marcella King ever Q.
- worked for the program? 5
- No, I don't know. A.
- Did you ever take a Marcella King check? 7 Q.
- Once on occasion. A. 8
- I am sorry. Would you repeat your answer. 9
- Yes. A. 10
- You did have occasion to take a Marcella King check, Q. 11
- is that correct? 12
- Yes. A. 13
- And what did you do with that check? 14
- I cashed it. A. 15
- Now I show you what is a part of Government's Exhibit 16
- Number 21 received into evidence and ask you, please, 17
- to look at both sides of this Marcella King check and 18
- indicate whether or not that is the Marcella King check 19
- which you took and cashed? 20
- Yes, it is. 21
- And is it your second endorsement that appears on the Q. 22 back of that check? 22
- Yes, it is.

A.

24

Did you personally ever take other than the David Tillman 25

31-A

H. T. Noel & E. F. Knisley REPORTERS. U. S. DISTRICT COURT

check and the Marcella King check that you just 1 testified about, any Jerome James, any other David 2 Tillman or Clayton Silver checks? 3 A. No. 5 MR. SKRETNY: Thank you, Mr. Lott. I have no 6 further questions at this time. 8 9 CROSS EXAMINATION BY MR. LALIME: Just a minute, if your Honor please. Mr. Lott, you 10 pled guilty to a crime against the United States 11 Government, is that right? 12 That's right. A. 13 And when was this, sir? Q. 14 I believe it was November of '75. I'm not sure. A. 15 How about October of 174? Q. 16 A. Well --17 Have you been sentenced? Q. 18 No. 19 Were you made some particular promises? Q. 20 I was made no promises. 21 But you haven't been sentenced? Q. 22 No, I haven't. 23 A.

Do you think this to be unusual?

Q.

A.

Pardon me?

24

Do you think this to be unusual that you weren't 1 Q. sentenced for this crime? 2 I never really thought about it. 3 You have been out since October of 1974? Q. A. Yes. 5 And no promises have been made to you? Q. No. A. 7 When you were asked to be a witness for the Government, 8 Q. 9 had you given them a story that you didn't commit these crimes? 10 I'm sorry. 11 A. Q. Had you told the Government beforehand, before you 12 volunteered to testify, that you didn't commit these 13 crimes? Yes, I did. A. 15 And who did you tell that to? Q. 16 Well, I spoke to my lawyer and, - in private session, A. 17 and Mr. Skretny. 18 And what did you tell him? 19 Q. That I had no involvement. A. 20 That you had the involvement in one check? 21 Pardon me? 22 A. 23 Q. That you had involvement in one check? That I had no involvement at all. 24 A.

25

You had no involvement at all and that was a lie?

1	Α.	At that time, yes.
2	Q.	Were you promised that there would be a recommendation
3		to the United States District Court Judge that if you
4		cooperated there would be some leniency on you?
5	Α.	Well, as I said, nothing was promised but the recommenda-
6		tion would be considered.
7	Q.	Well, how do you know that?
8	Α.	I can only take the word of the United States Attorney.
9	Q.	But he did make a promise to you, didn't he?
10	`A.	No promise, no.
11	Q.	What did he tell you specifically so we can
12	Α.	He said he would recommend in my behalf if I cooperated.
13	Q.	And did you cooperate?
14	Δ.	The best I could.
15	Q.	Do you know of your own knowledge whether Mr. Mathias
16		was given the same opportunity?
17	Α.	No, I don't.
18	Q.	And you testified before a grand jury, is that right?
19	Α.	Yes.
20	Q.	Now, Mr. Lott, there were certain checks referred to
21		here that I am going to get back on almost immediately,
22		the check of David Tillman, - David Tillman, Government
23		Exhibit Number 15 in evidence. Will you look at the
24		back of that check. Now, this is the check that you
25		told the jury you took out of the drawer, is that right?

1	A.	That's	right.
1	n.	Illat b	TTPITO .

- Q. And who helped you take it out of the drawer?
- 3 A. No one.
- 4 Q. You did it by yourself?
- 5 A. That's correct
- Q. Did you first of all talk to Alfred Mathias and tell
- 7 him you were going to take it out of the drawer?
- 8 A. No.
- 9 Q. Did you sit down with him on a preconceived arrangement
- and tell him you were going to take it out of the
- 11 drawer?
- 12 A. This particular check?
- 13 Q. This particular check.
- 14 A. No.
- 15 Q. Whose signature is this?
- 6 A. I signed it.
- 17 Q. You signed this?
- 18 A. Yes.
- 19 Q. You signed the David Tillman name?
- 20 A. Right.
- 21 Q. And you signed the Joseph Lott name?
- 22 A. Right.
- 23 Q. These are both your signatures?
- 24 A. Right.
- 25 Q. Alfred Mathias had nothing to do with this check?

1	A. No.		
2		-	
3	THE COURT	':	What exhibit is that?
4			
5	BY MR. LA	LIME:	
6	Q. The	it is Exhibit 15,	your Honor. Now, Exhibit 14,
7	and	other David Tillman	n check, there is a signature on
8	the	e back of that, is	that right?
9	A. The	at's right.	
10	Q. "Da	avid Tillman". Ho	w did this check get out of the
11	dra	awer, do you know?	
12	A. I	nave no idea.	
13	Q. No	idea whatever?	
14	A. I	never seen it.	
15	Q. Is	this your signatu	re up here too?
15	A. No	, it isn't.	
17	Q. Wh	ose signature is i	t?
18			
19	THE COUR	r:	Wait a minute. The jury and I
20		cann	ot see the check.
21	MR. LALI	ME:	I am sorry, your Honor.
22	THE COUR	r:	You are referring to
23	MR. LALI	ME:	The first endorsement.
24	THE COUR	T:	That is David Tillman.

1	BY	MR.	LALIME:
		1.11.	411 3 41 42 344 0

- 2 Q. And that 15 not your endorsement?
- 3 A. No.
- 4 Q. David Tillman was an individual that you put on the
- payroll, is that right?
- 6 A. That's correct.
- 7 Q. And how did you do this?
- 8 A. Well, I had hired David Tillman to work for the program.
- 9 Q. But he never worked for the program, right?
- 10 A. No.
- 11 Q. So how does his name get on this Government's Exhibit
- Number 10 marked for identification?
- 13 A. I don't know who put it on there at the time, but when
- I saw it, I knew he hadn't worked.
- 15 Q. You don't know who put this on there?
- 16 A. No.
- 17 Q. You didn't put this on there?
- 18 A. That's not my writing.
- 19 Q. But you certified that this was, he had worked, right?
- 20 A. Yes.
- 21 Q. And that's for the week starting 7-16-73 and ending, -
- I think it looks like 7-20, is that right?
- 23 A. Yes.
- Q. And was that before your meeting with Mr. Mathias or
- 25 after your meeting with Mr. Mathias?

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OFFICIAL REPORTERS. U. S. DISTRICT COURT

- U		
1	Α.	I can't recall.
2	Q.	Didn't you testify before this jury that you had a
3		meeting to conspire to steal these checks out of this
4		drawer sometime in the latter part of August, is that
5		right?
6	Α.	That's right.
7	Q.	The date is 7-16 here, is that right?
8	Α.	Yes.
9	Q.	Your signature is on here, isn't it?
10	Α.	Yes.
11	Q.	And that is your signature, isn't it?
12	F	Yes.
. 13	Q.	Was this meeting with Mr. Mathias before or after you
14		knew that there was some checks being taken down there
15		at the Intake Center?
16	Α.	This was after.
17	Q.	After?
18	Α.	Yes.
19	Q.	So that there had been some checks stolen and you knew
20		about it and then you had a meeting with Mr. Mathias,
21		is that right?
22	Α.	Well, I had heard that there had been some checks taken.
23		I didn't directly say that I knew who was taking the
24		checks at the time.
	H	

You didn't know anybody involved at that time?

25

Q.

		G Committee of the comm
1	Α.	No.
2	Q.	And did you approach Mr. Mathias and tell him about
3		this scheme to steal the checks out of the drawer?
4	Α.	No, I didn't.
5	Q.	You didn't tell that to the grand jury?
6	Α.	No.
7	Q.	Now, Marcella King, - Marcella King was the same
8		situation, is that right, she was never employed by
9		the Model Cities Program, was she?
10	Α.	I really don't know.
11	Q.	You don't know whether she was or not?
12	Α.	No, I don't.
13	Q.	The first signature on the people's exhibit or Govern-
14		ment Exhibit Number 21 admitted in evidence is the name
15		Marcella King?
16	Α.	Yes.
17	Q.	And didn't you tell us on direct examination that you
18		took this check out of the drawer, is that right?
19	Α.	No, I didn't.
20	Q.	What did you tell us?
21	Α.	I told you it was given to me.
22	Q.	That was given to you?
23	Α.	Yes.
24	Q.	Now, whose signature is that?
Control of the Contro		

25

A.

What signature?

- Q. "Marcella King".
- 2 A. I don't know.
- Q. But this is Joe Lott's signature, right?
- 4 A. Yes.
- 5 Q. The second signature, the co-endorsement.
- A. Yes.
- Q. Now, which check did you say you took out of the drawer, was it 20 or 21 you took, you took one of them out
- of the drawer, right, Marcella King?
- 10 A. I took David Tillman's check out of the drawer.
- 11 Q. That's the only one you took out?
- 12 A. Yes.
- 13 Q. That's what you testified to here today, is that right?
- 14 A. Yes.
- 15 Q. Government's Exhibit Number 17 marked in evidence is
- a check that says, has an endorsement "Jerome James".
- Did you have anything to do with that check?
- 18 A. No.
- 19 Q. Didn't you share in the proceeds of that check?
- 20 A. No.
- 21 Q. Did you testify in the grand jury that you shared in
- the proceeds of that check?
- 23 A. No.
- 24 Q. Are you sure of that?
- 25 A. As far as I can remember.

And this signature here is Alfred Mathias, is that right? 2 Yes, it is. 3 A. And you never had seen this check before, is that right? Q. 4 Not to my knowledge. 5 A. Do you know what that number is underneath that the Q. United States Attorney brought up? 7 No. A. 8 That 90-241289, do you know what that is? 9 No. Α. 10 Do you do much banking? 2. 11 A. On occasion. 12 Were you ever asked to show identification? Q. 13 Yes. A. 14 What identification were you asked to show? Q. 15 Well, draft card. A. 15 Do you have a driver's license? 17 Q. No. A. 18 Now, on the back of Government's Exhibit Number 18 for Q. 19 evidence, another check. This one is Clayton Silver's 20 who signed, - well, the first endorsement on that check, 21 is that right? Do you know Clayton Silver's? 22 No. 23 A. This is Alfred Mathias! signature down below there Q. 24

again, is that right?

1	Α.	Right.
2	Q.	It has that same number again? Would you say that is
3		the same number, it's 90-2411289?
4	Α.	No, that's not the same number.
5	Q.	That's not the same number?
6	Α.	Yes, same number.
7	Q.	Same number, and you don't know what that number is?
8	A.	No.
9	Q.	Mr. Lott, your duties as an Intake Officer, you had to
10		certify all these names, is that right?
11	Α.	Certify the time sheets.
12	Q.	Certify the tim oneets, and where did you get this
13		information?
14	Α.	Well, it came in from the different job sites.
15	Q.	It came in by mail?
16	Α.	No, brought in.
17	Q.	Always brought in or was it telephoned in sometimes?
18	Α.	Sometimes it was telephoned in.
19	Q.	Now, you also said in this meeting of August of 1973
20		that you knew these checks were in the drawer, is that
21		right?
22	Α.	Everyone knew they were in the drawer.
23	Q.	And they were from previous weeks and you pluralized
24		"weeks", didn't you, you said they were from previous

weeks?

1	Α.	Yes.
2	Q.	Now, they weren't in there for three days or four days;
3		for a week, - they were in there from previous weeks
4		and you knew that?
5	Α.	Yes, some of them, yes.
6	Q.	And you had been in that drawer before, right?
7	Α.	Well, I had the right to go in that drawer.
8	Q.	Yes, but you had been in that drawer before?
9	Α.	Yes.
10	Q.	And you saw those checks in there?
11	Α.	Which checks are you speaking of?
12	Q.	The checks in general, the checks that had been returne
13		because there was no payee to pick them up.
14	Α.	Well, yes, I knew they were in there.
15	Q.	And did you count them at anytime?
16	Α.	No
17	Q.	And was the drawer locked or unlocked?
18	Α.	It was unlocked.
19	Q.	Now, Mr. Lott, you started work shortly before Mr.
20		Mathias, is that right, on that job?
21	Α.	No. We started at the same time.
22	Q.	Started together, and when you started the program was
23		kind of hectic, wasn't it?
24	A.	Yes.

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And there was a lot of confusion?

Q.

1	Α.	Yes.
2	Q.	There was people on the payroll that shouldn't have
3		been on the payroll, is that right?
4	Α.	At that time I wouldn't know.
5	Q.	Do you know that to be a fact now, that there was
6		people on the payroll shouldn't have been there?
7	Α.	Yes.
8	Q.	And do you know there were recple receiving checks that
9		never worked a day?
10	Α.	Dave Tillman, for one.
11	Q.	Anybody else to your knowledge?
12	Α.	I can't recollect.
13	Q.	You don't recall telling anybody that there was people
14		coming down and picking up checks that never worked
15		a day?
16	Α.	No.
17	Q.	Your job then basically was to issue applications?
18	Α.	No. My job basically in all was to issue applications,
19		to interview, assign, certify time and issue checks.
20	Q.	So any name that appeared on that payroll time sheet
21		was a name tha was approved by you?
22	Α.	Yes.
23	Q.	The name of Jerome James was approved by you?
24	Α.	Yes.
25	Q.	The name of Marcella King was approved by you?
		-44-

1	Α.	Yes.
2	Q.	The name of Clayton Silver was approved by you, is
3		that right?
4	Α.	Yes.
5	Q.	So all of these people were approved by you?
6	Α.	Yes.
7	Q.	Now, Mr. Lott, in that summer of '73 there was some
8		problems with the computer system and the payroll,
9		wasn't there, about checks being issued?
10	Α.	On occasions, yes.
11	Q.	Now, can you recall the exact period after you started
12		when the first checks were issued?
13	Α.	When?
14	Q.	In relation to weeks.
15	Α.	How much time?
16	Q.	From the first day the kids started their jobs to the
17		first pay period.
18	Α.	I'm not sure, but I think maybe one week following the
19		program or possibly two weeks.
20	Q.	And then there was some people that worked in the
21		program that didn't get any checks, is that right?
22	Α.	Yes.
23	0.	And what would happen in an incident like that when
24		somebody came down and says "I worked, Mr. Lott, but I
25		didn't get a check"; what would you do then?

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1	Α.	Well, we would take the person's name and, - well, in
2		the beginning we would call different job sites for
3		the time for this person and a lot of times the job
4		site would call us and give us the time.
5	Q.	And wasn't there times also that you would call, say,
6		David Echols and he would say "Put him on the payroll
7		anyway"?
8	Α.	Yes.
9	Q.	Even though he hadn't worked, even though there was no
10		time verification, is that right?
11	Α.	Yes.
12	Q.	Now, there were individuals, - do you recall the name
13		of Kenneth Meyers?
14	Α.	Excuse me?
15	Q.	Kenneth Meyers.
16	Α.	Ye'.
17	Q.	Did enneth Meyers work for Model Cities Youth Program?
18	Α.	He at first worked for the Agency as a full-time staff
19		member and then he later
20		
21	THE CO	DURT: Mr. Lott, could you keep your voice
22 .		up, please.
23	THE WI	TNESS: Yes. He has first worked for the
4		Model Cities Agency as a staff personne:
5		and then later he was put on the summer

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WEST DISTRICT COURT

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payroll.

2

- 3 BY MR. LALIME:
- 4 Q. Under what name?
- 5 A. Thomas Gaines.
- 6 Q. So it wasn't his own?
- 7 A. Yes.
- 8 Q. Did you certify his --
- 9 A. No, it wasn't my job to certify his time.
- 10 Q. Whose job was that?
- 11 A. I'm not sure who it was. I believe it was Walter
- Miller's.
- 13 Q. But he worked at Intake Number 200, is that right?
- 14 A. Yes.
- 15 Q. And you saw him working?
- 16 A. I saw him there.
- 17 Q. You saw him there?
- 18 A. Yes.
- 19 2. And what times did you see him there?
- 2'. A. Generally just before we were leaving.
- 21 Q. After the day was over?
- 22 A. Yes.
- 23 Q. Was there anybody else you saw in that working capacity
- that would come down as the day was all over and sign
- 25 in?

- 1 A. I can't recall.
- 2 Q. Is the name Pat Taylor familiar to you?
- 3 A. The name is, but the individual, no.
- 4 Q. Was she down there, was she on your payroll down
- there at 585 Michigan?
- 6 A. I believe so, yes.
- 7 Q. Did you interview her when she was put on your payroll?
- 8 A. I don't know. I don't think so. I couldn't say. I
- 9 interviewed maybe 500 kids.
- 10 Q. Yes, but there was only so many put on your payroll
- from your section, 's that right?
- 12 A. Yes.
- 13 Q. You only approved --
- 14 A. Pat Taylor as I recall was put on by Walter Miller.
- 15 Q. By Walter Miller?
- 16 A. Yes.
- 17 Q. And did you see her working down here?
- 18 A. No.
- 19 Q. And she came in about the same time, is that right?
- 20 A. I never met her.
- 21 Q. You never did?
- 22 A. I never saw her.
- 23 Q. But she was on the payroll, is that right?
- 24 A. Yes.
- 25 Q. Do you know an Arzella Smith?

1		the 585 office and the main office at 34 W. Mohawk.
2		That was Joan Moore. Christine Garmon, she served more
3		or less as an overseer at 585 in place of Walter Miller.
4	Q.	I am not going through the 1400 names, your Honor, I
5		want to assure the jury of that.
6		
7	THE C	OURT: Go ahead, Mr. Lalime.
8		
9	BY MR	. LALIME:
10	Q.	The name Elaine Taylor or Tyler, does that mean anything
11		to you?
12	Α.	Yes, it is.
13	Q.	And she worked down there at the Intake Center 200,
14	AS	didn't she?
15	Α.	She worked at the center?
16	Q.	Yes.
17	Α.	No, I don't think she worked at the center.
18	Q.	Did you hire her?
19	Α.	Yes, I did.
20	Q.	Did she work?
21	Α.	For a short while.
22	Q.	And she received checks?
23	Α.	Maybe one.
24	Q.	Did you ever have the occasion to take a check of
25		Elaine Taylor's?

- 2 Q. Did you cash that check?
- 3 A. Yes.
- Q. Did you, in fact, forge her endorsement on the back of
- 5 that check?
- 6 A. Yes, I did.
- 7 Q. Is the name Melinda Marshall familiar to you?
- 8 A. Yes,it is.
- 9 Q. Did she ever work for the summer program?
- 10 A. I didn't even know her.
- 11 Q. You didn't know her?
- 12 A. No.
- 13 Q. Were checks issued to Melinda Marshall?
- 14 ... One I know of.
- 15 Q. And who caused that check to be issued?
- 16 A. I don't know.
- 17 Q. Was her name on the certified sheet?
- 18 A. Which certified sheet?
- 19 Q. Time sheet, one of the many certified.
- 20 Q. It would have to be on one for a check to be issued.
- 21 Q. And who would approve her name going on that sheet?
- 22 A. I would.
- 23 Q. You would. What happened to this check of Melinda
- 24 Marshall's?
- 25 A. I took it.

1	Q.	Did you deposit it in your account?
2	Α.	No. I think I cashed it directly.
3	Q.	And when was that you did this, - first of July?
4	Α.	I don't recall when it was.
5	Q.	The beginning of the program or the end of the program?
6	Α.	Are you asking me?
7	Q.	Yes, the beginning of the program or the end of the
. 8		program?
9	Α.	I'm not sure.
10	Q.	And you forged her name, is that right?
11	Α.	Yes.
12	Q.	You told this jury earlier that you didn't put the name
13		of Marcella King on a payroll check, is that right?
14	Α.	No, I did not.
15	Q.	What did you tell them?
16	Α.	I told them I second endorsed one.
17	Q.	How about the name Marcella King herself, did you put
18		a primary endorsement on there forging her name?
19	Α.	No.
20	Q.	When you were asked in the grand jury if Melinda Marshall
21		worked for the summer program, do you recall giving an
22		answer?
23	Α.	I won't recall what my answer was.
24	Q.	What was your answer here just beforenand, do you recall
25		that?
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Now, David Tillman, and I will show you Exhibit 13

Q.

1		marked for identification in evidence, lived at 463
2		Watson Street, is that right?
3	Α.	That's what the check says.
4	Q.	Where is Watson Street in relation to 585 Michigan?
5	Α.	It would be like, - what do you mean, in terms of
6		blocks?
7	Q.	Yes.
8	Α.	I would say about twelve blocks.
9	Q.	And would that better, - best be served by some other
10		intake center rather than 585, - twelve blocks from
11		here north, east or west or south would it?
12	Α.	It would be twelve blocks going east from 585 Michigan.
13	Q.	Okay. That would be beyond Fillmore Avenue, is that
14		right?
15	Α.	No, it wouldn't be beyond. It would be just past
16		Jefferson Avenue.
17	Q.	Just past Jefferson Avenue, Zone Number 700 as indicated
18		here, is that right?
19	Α.	No. It was in the downtown area. Watson Street was
20		in the downtown area.
21	Q.	Oh, so this 700 wouldn't necessarily take the people
22		from around that area?
23	Α.	Well, the 700 block would be the people in the Cold
24	•	Spring area.
25	Q.	That is just people from the Cold Spring area?

1	A. That's right.
2	Q. And Watson Street would be in the downtown one?
3	A. Yes.
4	Q. How about Orange Street?
5	A. How about it?
6	Q. What would that take in?
7	A. Fruit Belt area.
8	Q. And Jefferson would take in the Fruit Belt area or the
9	Cold Springs area?
10	
11	MR. SKRETNY: Your Honor, I object to the
12	relevancy of this line of questioning
13	at this time.
14	THE COURT: I will overrule it. Mr. Lalime
15	MR. LALIME: Yes, your Honor.
16	THE COURT: Why don't you ask
17	MR. IALIME: I am just coming to the question,
18	your Honor.
19	THE COURT: All right, go ahead.
20	
21	BY MR. LALIME:
22	Q. Sir, anybody from the core area or from the Model
23	Cities Program could work in the downtown site, is
24	that right?
25	A. Yes.

1	Q.	They didn't have to go into any one of these intake
2		centers, is that right; they didn't have to apply, -
3		if they lived on Watson Street, they didn't have to
4	Α.	They didn't have to apply at any center.
5	Q.	They had to apply where?
6	Α.	They could apply. Well, it was set up for them to
7		apply to the center nearest, - in the area, but we
8		didn't turn down anyone applying who lived in Cold
9		Spring and applying downtown.
10	Q.	But David Tillman did apply downtown, 585?
11	Α.	Yes.
12	Q.	And you didn't hire him?
13	Α.	I did hire him.
14	Q.	He didn't work?
15	Α.	He didn't work, no.
16	Q.	Did he receive any profits from the organization?
17	Α.	I don't believe so.
18	Q.	You cashed all his checks, didn't you?
19	Α.	I cashed one.
20		
21	THE C	OURT: Mr. Lott, did you give David
22		Tillman any cash?
23	THE W	ITNESS: No.
24		
25	BY MR	a. LALIME:

- 1 Q. Now, Christine Garmor was an administrative assistant 2 to --Walter Miller. 3 Walter Miller, and on occasion, - on many occasions she asked you to certify a name that she had given you? 5 Yes. 6 You don't know whether they were working or not, is Q. 7 that right? 8 9 A. No. Did Joan Moore ever ask you to certify names that she 10 had given you? 11 Not that I can remember. A. 12 Mr. Lott, have you ever been convicted of any other Q. 13 crime? 14 Yes, " have. A. 15 16 And what was that, sir? Criminal trespassing and petit larceny. 17 Criminal trespassing and petit larceny over in the Q. 18 City Court of Buffalo? 19
- 20 A. Yes.
- 21 Q. In fact, wasn't that a burglary that was knocked down
- to a criminal trespass, is that right?
- 23 A. Yes.
- 24 Q. Did you go to jail for that?
- 25 A. No.

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25

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1	MR. LALIME:	Not verified yet. We are trying
2	-	to verify it right now, that he is
3		under the influence of carcotics right
4		now. I don't have verification and I
5		was calling for a side bar conference
6		right after I asked the question.
7	MR. SKRETNY:	I think the jury should be instructed
8		to disregard that question and any
9		inference to be drawn from it.
10		
11		(Side bar conference concluded.)
12		
13	THE COURT:	Ladies and gentlemen, as far as the
14		question is concerned, you heard the
15		answer and counsel is bound by the
16		answer. We have the denial here and
17		that is the end of it. Next question,
18		please.
19	MR. LALIME:	I have no further questions, your
20		Honor.
21	THE COURT:	Anything else, Mr. Skretny?
22	MR. SKRETNY:	Yes, Judge, one or two questions.
23	THE COURT:	All right.
24		
25	1//	

1	REDIRECT EXAMI	NATION BY MR. SKRETNY:
2	Q. Mr. Lott	, you testified on cross examination that no
3	promises	were made to you by the Government in exchange
4	for your	testimony, is that correct, sir?
5	A. That's c	orrect,
6	Q. And, how	ever, you indicated that I promised you that the
7	Governme	nt would recommend to the judge, is that
8	correct?	
9	A. Yes.	
10	Q. And woul	ou tell us, please, what it was I promised
11	to recon	nmend to the judge?
12	A. That you	would tell the judge that I had cooperated.
13	Q. And noth	ning more, nothing less, isn't that correct?
14	A. That's	right.
15		
16	MR. SKRETNY:	No further questions. Thank you.
17	THE COURT:	All right, Mr. Lott, thank you.
18		Next witness, please.
19	MR. SKRETNY:	Your Honor, may I just have a
20		brief side bar with the Court?
21	THE COURT:	We do not need Mr. Knisley?
22	MR. SKRETNY:	No, we don't need Mr. Knisley.
23		
24		(Off the record side bar conference
25		held between Court and counsel.)
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H. T. Noel & E. F. Knisley
OFFICIAL REPORTERS. U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Complete	testimony	of	Charles	T'.	Spitzer
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1 MR. SKRETNY:

May I just have a moment, please.

Thank you.

3

2

* * * * * *

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CHARLES T. SPITZER (9th and Pennsylvania Avenue, Northwest, Washington, D.C.), a witness called by and in behalf of the Government, having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION BY MR. SKRETNY:

- 12 Q. Mr. Spitzer, what is your occupation, sir?
- 13 A. Special Agent with the Federal Bureau of Investigation.
- 14 Q. And how long have you been with the Federal Bureau of Investigation?
- 16 A. Over sixteen years.
- 17 Q. And would you give us briefly, please, your educational background?
 - A. I have a Bachelor of Science Degree from the American
 University in Washington, D.C. I also have a Masters of
 Science Degree from George Washington University, also
 of Washington, D.C.
 - Q. And do you have a special assignment with the Federal Bureau of Investigation?
- 25 A. Yes. I am currently assigned to the FBI Laboratory,

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WEST AN DISTRICT OF NEW YORK

1		the Document Section.
2	Q.	Would you explain to us what your functions and duties
3		are with the Document Section of the FBI at the present
4		time?
5	Α.	As a document examiner I examine handwriting, typewriting
6		the various areas of the graphic arts involving printing
7		problems. Also the examination of papers, inks and
8		other printed matters.
9	Q.	Now, is this your full-time assignment?
10	Α.	Yes, it is.
11	Q.	And how long has that been your full-time assignment,
12		sir?
13	Α.	I have been examining documents for approximately seven
14		years.
15	Q.	And can you approximate for us the number of documents
16		you have examined in that period of time?
17	Α.	I examined approximately a thousand cases a year involv-
18		ing anywhere from one specimen to maybe several hundred,
19		so the exact number, I could only estimate it.
20	હ.	And have you received special training in this art of
21		document examination?
22	Α.	Yes, I have. After being assigned to the laboratory,
23		I attended a specialized course in the field of
24		document examination. This included attending classes,
15		reading books and pamphlets in the field, attending

seminars and working under the direction and guidance of experienced examiners.

- Q. And have you qualified to testify in various other courts with respect to document analysis?
- A. Yes, I have.

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Q.

- Q. And approximately how many times have you testified in court as a witness with respect to document analysis?
- A. Approximately fifteen times.
 - Agent Spitzer, I now show you what has been previously received into evidence as Government's Exhibit Number 14 which is a David Tillman check in the amount of \$217.72, bearing the endorsement Alfred C. Mathias and Government Exhibit Number 16 received into evidence made payable to Jerome James in the amount of \$30.13 bearing the second endorsement Alfred C. Mathias; Government's Exhibit Number 17 received into evidence made payable to Jerome James in the amount of \$60.26 bearing the second endorsement Alfred C. Mathias and the number 90-241289, and a Clayton Silver's check, Government's Exhibit Number 18 received into evidence in the amount of \$87.09 and bearing the second endorsement Alfred C. Mathias with the identifying number 90-241289. Would you take a look at those documents, please, Agent Spitzer. Have you seen those exhibits before?

A. Yes, I have.

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WESTERN DISTRICT OF NEW YORK

	1	
1		there. Instead of saying "First and
2		second endorsement"
3	-	
4	BY N	MR. SKRETNY:
5	Q.	All right. Now, directing your attention specifically
6		to the Alfred C. Mathias second endorsements on those
7		exhibits, - that is, Exhibits 14, 16, 17 and 18, did
8	1	you conduct an examination of those second endorsements?
9	Α.	Yes, I did.
10	Q.	And did you compare those endorsements against a known
11		exemplar?
12	Α.	Yes.
13	Q.	And I show you what has been previously marked for
14		identification as Government's Exhibit Number 25 for
15		identification and ask you, please, to take a look at
16		that exhibit.
17		
18	MR.	LALIME: Your Honor, we have stipulated to
19		the fact that Mr. Mathias did secondly
20		endorse each one of these checks that
21		are in evidence right now.
22	THE (COURT: These checks, the writing "Alfred
23		Mathias" you stipulate is Alfred Mathias!?
24	MR. I	LALIME: Exactly right, your Honor.
25	THE C	COURT: Very well. Go ahead, Mr. Skretny.
		. Skretny.

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OFFICIAL REPORTERS. U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

1	further, Mr. Lalime, and much quicker
2	if you will refer the agent to particular
3	signatures. For example, there is a
4	David Tillman signature. Were you
5	asked to make a study of that particular
6	signature?
7	THE WITNESS: Yes, sir, I was.
8	THE COURT: And comparison of that with others
9	THE WITNESS: That is correct.
10	THE COURT: All right Did you come to any
11	conclusions as far as that signature
12	was concerned?
13	THE WITNESS: In a comparison of the David
14	Tillman endorsement on Government's
15	Exhibit 14 I was unable to definitely
16	determine whether this endorsement was
17	or was not prepared by Mr. Alfred
18	Mathias.
19	
20	BY MR. LALIME:
21	Q. That is on 14?
22	A. That is Government Exhibit 14, that's right.
23	Q. Now I will show you Government's Exhibit 15 marked as
24	evidence and would you look at those signatures of
25	David Tillman and Joe Lott. Now, would you refresh

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OFFICIAL REPORTERS. U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

	l l		
1		your memory wit	th your investigation and tell us whether
2		the name of Day	vid Tillman could have been written or
3		was written by	Joseph Lott?
4	Α.	Inasmuch as, -	is this a comparison of one endorsement
5		with the other?	
6	2.	No. It is a co	emparison of your known exemplars along
7		with Joseph Lot	t's signature here and the name David
8		Tillman.	
9	Α.	I would have to	look at my report to refresh my
10		recollection of	this particular item.
11			
12	MR.	SKRETNY:	This has been previously marked,
13			your Honor, as Court Exhibit Number 12.
14	THE	COURT:	Thank you, Mr. Skretny.
15	MR.	SKRETNY:	You are welcome.
16	THE	COURT:	Probably the exhibit numbers will
17			not match with your numbers on your
18			report. I wonder, Mr. Skretny, do you
19			know how the exhibit numbers work with
20			the agent's report numbers?
21	MR.	SKRETNY:	Yes. Each one of the Government's
22			exhibits is also identified by a "Q"
23			number.
24	THE	COURT:	I realize that.
25	MR.	SKRETNY:	There is a "Q" number of Government

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1 'xhibit 15 and that identifies it with 2 the report itself, so by simply looking 3 at the "Q" number it can be correlated 4 directly to the report. 5 THE COURT: All right. THE WITNESS: 6 I made a comparison of the David 7 Tillman endorsements on Government's 8 Exhibit 15 with the known or authenticated 9 writing of Alfred Mathias. However, 10 I have no information regarding a 11 comparison with the authenticated 12 writing of Mr. Lott. 13 BY MR. LALIME: 14 Q. And as far as that signature of David Tillman is 15 concerned, it could be, - could have been put there by 16 Joseph Lote, is that right? 17 MR. SKRETNY: 18 Objection to the form of the 19 question. THE COURT: 20 No. MR. LALIME: 21 He testified --THE COURT: 22 Overruled. MR. SKRETNY: 23 It could have been put there by. 24 anybody. 25 THE COURT: Let the witness answer. He can

1		answer.
2	THE WITNESS:	In the absence of a comparison
3		with the, - in the writing or in the
4		name of Davic Tillman prepared by
5		Joseph Lott, I would be unable to make
6		a statement regarding whether it was or
7		was not made or prepared by this
8		individual.
9	MR. LALIME:	Fine. Thank you, sir. I have
10		no further questions.
11	THE COURT:	Anything else, Mr. Skretny?
12	MR. SKRETNY:	Nothing at all, your Honor.
13	MR. LALIME:	Thank you, Agent.
14	THE COURT:	The witness is leaving?
15	MR. SKRETNY:	That is correct.
16	THE COURT:	All right. The United States calls
17		Mr. Clayton Silver.
18	THE COURT:	All right. I think what we will
19		do now, Mr. Skretny, is we will be in
20		recess until tomorrow morning and resume
21		in the morning. I expect that we will
22		be able to, - I think we can start
23		tomorrow at about 9:30.
24		I think we can start at 9:30
25		tomorrow, ladies and gentlemen, so we
1		-71-

OFFICIAL REPORTERS. U. S. DISTRICT COURT

Your Honor

1	A. Yes, I am.
2	Q. And where do you work?
3	A. Chevrolet, Buffalo.
4	
5	MR. SKRETNY: Your Honor, I am not sure the
6	microphone is on. Should it be?
7	THE COURT: I am sorry.
8	
9	BY MR. SKRETNY:
10	Q. Where do you ork, please?
11	A. Chevrolet, Buffalo.
12	Q. Would you speak up just a little bit?
13	
14	THE COURT: It will come on now.
15	THE WITNESS: Chevrolet, Buffalo.
16	
17	BY MR. SKRETNY:
18	Q. Okay. Thank you, and how long have you worked at
19	Chevrolet in Buffalo?
20	A. Five years.
21	Q. And where is the Chevrolet Plant located that you work
22	at?
23	A. On East Delavan.
24	Q. And what shift do you currently work?
25	A. Second shift, 3:30 to 12:00.

11		
1	Q.	Now, calling your attention to the summer of 1973,
2		were you still employed at the Chevrolet Plant in
3		Buffalo during that period of time?
4	Α.	Yes.
5	Q.	Now, calling your attention again to the summer of
6		1973, what shift did you work at the Chevrolet Plant
7		during that summer?
8	Α.	3:30 to 12:00.
9	Q.	Okay. Would you just keep your voice up a little bit.
10		I know it is hard, but please do. Okay. Can you hear
11		me okay?
12	Α.	Yes.
13	Q.	Now, do you know an individual named Alfred Mathias?
14	Α.	Yes.
15	Q.	Do you see him in court today?
16	Α.	Yes.
17	Q.	Would you point him out for us, please?
18	Α.	Over there.
19	Q.	Let the record reflect that the witness has identified
20		the defendant, your Honor. Mrs. King, when did you
21		come to know of Alfred Mathias?
22	Α.	Well, I knew of him in high school.
23	Q.	And where did you attend high school?
24	Α.	East High School.
25	Q.	You will have to speak up again, please.

'	Α.	At East High School on Northampton.
2	Q.	Okay, and did you graduate from East High School?
3	Α.	No.
4	Q.	When did you stop going to East High School?
5	Α.	January 169.
6	Q.	And was Alfred Mathias in high school at the same
7		period of time that you were there?
8	Α.	Yes. I was a freshman or a sophomore.
9	Q.	You will have to speak up, please.
10	Α.	I was a freshman or a sophomore.
11	Q.	And he was in East High School at that time, is that
12		right?
13	Α.	Yes.
14	Q.	All right. Now, did there come a time after you left
15		East High School that you came to know Alfred Mathias?
16	Α.	Yes.
17	Q.	Now, calling your attention to the summer of 1973, did
18		you know Alfred Mathias during the course of the summer
19		of 1973?
20	Α.	Yes.
21	Q.	Would you tell us, please, how you came to know Alfred
22		Mathias during the summer of 1973?
23	۸.	Well, I met him through a girlfriend of mine. She was
24		going with a friend of his and they introduced us.
25	Q.	Now, you again will have to speak up, please.

1	THE C	OURT:	Can't you speak up? Do you have a
2		-	cold?
3	THE W	ITNESS:	No.
4	THE C	OURT:	You do not have to be nervous in
5			here. Nobody has to be nervous. Move
6			your chair up a little bit.
7	THE W	ITNESS:	Okay. I met him through a girlfriend
8	*		of mine who was going with a friend of
9			his.
10			
11	BY MR	R. SKRETNY:	
12	Q.	All right, and	did you see Alfred Mathias from time to
13		time during the	summer of 1973?
14	Α.	Yes, he came to	visit me.
15	Q.	And where did h	ne come to visit you?
16	Α.	At 406 East Fer	rry.
17	Q.	And what is loo	eated there?
18	Α.	Where I used to	o live.
19	Q.	Okay, and did y	you see him on a regular basis during the
20		summer of 1973	?
21	Α.	I don't know wh	nat you mean by "regular".
22	Q.	Well, did you s	see him more than once or twice during the
23		summer?	
24	Α.	Yes.	
25	Q.	Now, during the	summer of 1973, did you work for the

	Di .	
1		Mayor's 1973 Summer Youth Program?
2	Α.	No.
3	Q.	Now, during the summer of 1973 did you have a conversa-
4		tion with Alfred Mathias about the Model Cities Mayor's
5		1973 Summer Youth Program?
6	Α.	Yes, I did.
7	Q.	Now, as best as you can recall, when approximately did
8		that conversation or conversations take place?
9	Α.	Around July, about the beginning of July.
10	Q.	And do you remember where it took place?
11	Α.	At my home.
12	Q.	Now, would you, as best you can recall, tell us, please,
13		what Alfred Mathias said to you and what you said to
14		Alfred Mathias during the course of that conversation
15		in the summer of 1973 in the month of July?
16	Α.	Well, he asked me did I want to make a little extra
17		money and I asked him how and he told me I didn't have
18		to do anything, and I asked him would I get in any
19		trouble doing it and he told me, "No, don't worry about
20		a thing. I will take care of it", and I told him "Okay."
21	Q.	Now, did he tell you what it concerned?
22	Α.	About where he worked at the time.
23	Q.	And where was that?
24	Α.	At the Michigan "Y".
25	Q.	Now, what did you tell Alfred Mathias about making some
CHARLES THE STATE OF THE STATE OF		

1		extra money?
2	Α.	I told him "Okay, if I didn't get in any trouble", and
3		he assund me I wouldn't get in any trouble.
4	Q.	Now, after that conversation in July of 1973, did you
5		receive any Model Cities Agency paychecks during that
6		summer?
7	A.	Yes.
8	Q.	And how many did you receive?
9	Α.	Three.
10	Q.	And from whom did you receive them?
11	Α.	Alfred Mathias.
'2	Q.	Do you recall the amounts of the paychecks which you
13		received from Alfred Mathias?
14	Α.	Yes.
15	Q.	And would you tell us, please, the approximate amounts
16		of those three paychecks?
17	Α.	Two were for \$87 and one was for forty-three.
18	Q.	Now, did you receive all of those three paychecks at
19		one particular time?
20	Α.	No.
21	Q.	And would you tell us, please, how you received those
22		paychecks?
23	Α.	Well, the first one I went down and picked it up from
24		him and the second time I met him on the corner of
25		Jefferson and Genesee and he gave me two.

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1	Q.	Now, I show you what has previously been received into
2		evidence as Government's Exhibit Number 21 and I show
3		you three checks from that exhibit, the first made
4		payable to yourself dated August 17, 1973 in the amount
5		of \$87.09, the second dated August 6, 1973, made payable
6		to yourself, Marcella King, in the amount of \$87.09,
7		and the third dated July 30, 1973, payable to yourself
8		in the amount of \$43.54. Do you recognize those
9		checks?

- o A. Yes.
- Q. And are those the three checks that you received from L.
 Alfred Mathias?
- 13 A. Yes.

- 14 Q. Do you recall which one of the three checks you received first?
 - A. I don't really know. I think, I knew it was an \$87 one.
- 18 Q. So it was one of the two \$87.09 checks, is that right?
- 19 A. Yes.
- 20 Q. Now, directing your attention to the reverse side.
- 21 A. No, no, this is the first one, the \$43.
- 22 Q. The \$43.54 check?
- 23 A. That's the first one.
- Q. All right. Directing your attention to the reverse side of those checks, do the checks contain a signature

1		endorsement on the back of those checks?
2	Α.	Yes.
3	Q.	And what is the name that appears there?
4	Α.	Marcella King.
:	Q.	And did you write the name Marcella King on each one
6		of those three checks?
7	Α.	Yes.
8	હ.	Now, after receiving the first of those three paychecks,
9		Model Cities Agency checks in the summer of 1973 from
10		Alfred Mathias, what did you do with that first paycheck?
11	Α.	I went to the bank to cash 1t.
12	સ.	All right, and did you cash it at that time?
13	Α.	No. They told me I needed ar I.D. card.
14	Q.	And did you have an I.D. card?
15	Α.	No, I didn't.
16	Q.	Now, would you tell us what you did after not being
17		able to cash that first Model Cities paycheck?
18	Α.	Well, I took it back and I told him that I couldn't
19		cash the check until I got a Model Cities I.D. card.
20	Q.	Now, you told him. Who is "him"?
21	Α.	Alfred Mathias.
22	Q.	Okay, and when did you, as best you can recall, after
23		you had received the paycheck, go back to Alfred Mathias
24		to tell him that?
25	Α.	The same day.

And what did he tell you? 1 Q. He told me aon't worry about it, he will give me one. A. 2 Now, I show you what has been previously marked for Q. 3 identification as Government's Exhibit Number 28. 4 Would you take a look, please, at Government's Exhibit 5 Number 28 or identification and tell the ladies and 6 gentlemen, please, if you can identify that particular 7 exhibit? 8 A. 9 Yes. And what is it? 10 Q. A. An I.D. card. 11 You will have to speak up. Q. 12 Mayor's Model City I.D. card. A. 13 And would you describe that card for us, please? Q. 14 Well, it says "Mayor's Model Cities 1973 Summer Program". A. 15 All right. Now, that is a sticker, is it not? Q. 16 17 A. Yes. And beneath that is another sticker, is that correct? Q. 18 A. Yes. 19 Speak up, please. Would you tell us what is on the Q. 20 second sticker on that card? 21 It has some numbers, "7012062299" and "Marcella King, A. 22 406 East Ferry Street, Buffalo, New York". 23 And was that your address during the summer of 1973? Q. 24

A.

25

Yes.

And that is your name, is that correct? Q. 1 Yes. A. 2 And did you give this card to me? 3 Q. A. Yes. 4 And from whom did you obtain this card? Q. 5 Alfred Mathias. A: Now, after receiving this Model Cities identification Q. 7 card from Alfred Mathias, what did you do with the 8 card and with the first Model Cities check that Alfred Mathias gave you? 10 I went and cashed it. A. 11 Okay, and after cashing the check, what, if anything, Q. 12 did you do with the proceeds of that check? 13 Well, I gave sixty per cent to him and I took forty A. 14 per cent. 15 Q. Okay. Now, did there come a time after the first 16 paycheck that you received that you received two other 17 checks from Alfred Mathias? 18 A. Yes. 19 All right, and did you cash those checks? Q. 20 Yes. A. 21 Q. And where was Alfred Mathias at the time that you 22 cashed those two checks? 23 On Genesee and Jefferson. A. 24 And how close to the place where you cashed the check Q.

1		was that?
2	Α.	Across the street.
3	Q.	All right, and you cashed those checks in what type of
4		an institution?
5	Α.	My checking account.
6	Q.	At a bank, is that correct?
7	Α.	Yes.
8	Q.	And did you receive proceeds from those two checks which
9		you cashed?
10	Α.	Yes.
11	Q.	And what did you do with the proceeds of those two checks
12	Α.	Put them in the bank.
13	Q.	Okay, and did you give any money to Alfred Mathias from
14		those two checks?
15	Α.	Yes.
16	Q.	And how much did you give him?
17	Α.	Half.
18	Q.	How much?
19	Α.	Half.
20	Q.	Half of what you got from the two checks that you
21		cashed?
22	Α.	Yes.
23	Q.	Now, I show you what has previously been received into
24		evidence, Mrs. King, Government's Exhibit Number 20,
25		and ask you to take a look at that, please. Would you

1		tell us, please, whether that is a Model Cities paycheck
2		made payable to Marcella King?
3	Α.	Yes, it is.
4	Q.	And tell us, please, the date and amount of that check.
5	Α.	The date is $9-4-73$ and the amount is \$87.09.
6	Q.	For the next question just talk up a little bit more,
7		please. I am directing your attention to the reverse
8		side of that same paycheck and would you tell us how
9		many endorsements are contained on the rear side of that
10		check?
11	Α.	Two.
12	Q.	And the first name is endorsed what?
13	Α.	Marcella King.
14	Q.	Okay, and the second name is endorsed what?
15	Α.	Alfred Mathias.
16	Q.	And is there an identifying number under the name
17		Alfred Mathias?
18	Α.	Yes.
19	Q.	Would you read that number for us, please?
20	Α.	90-241289.
21	Q.	Now, directing your attention to the st endorsement
22		"Marcella King", did you write that ends sement?
23	Α.	No.
24	Q.	The second endorsement reads "Alfred C. Mathias", is
25		that correct, or "Alfred Mathias"?

1	Α.	Yes. Did you write that name "Alfred Mathias"?
2	· Q.	Did you write that name "Alfred Mathias"?
3	A. Q.	No.
4	Q.	Did you receive any of the proceeds of that check,
5		that 1s the \$87.09?
6	Α.	No.

Q. Now, I show you the fourth check in Government's

Exhibits received into evidence, Number 21, another

Model Cities check made payable to Marcella King, is
that correct?

11 A. Yes.

Q. Would you tell the ladies and gentlemen of the jury, please, what the date of that check is?

4 A. 9-11-73.

Q. And the amount of that check is how much?

16 A. \$43.54.

Now, I direct your attention to the rear of that check and ask you to tell us, please, how many endorsements appear on the rear of that check?

A. Two.

Q. And what is the first name?

22 A. Marcella King.

23 Q. And what is the second name?

A. Joe Lott.

25

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MR. LALIME:	Your Honor, I am going to object
	to this bein gone over with the witness.
	Joseph Lott is not on trial in this
	matter.
THE COURT:	You will connect it up?
MR. SKRETNY:	Yes, your Honor. I think in some
	sense it relates directly to Mr. Lo tis
	testimony that he did, in fact, handle
	this one particular check and it is
	already in evidence. That is my
	recollection.
THE COURT:	Very well.
MR. LALIME:	Your Honor, may we be heard at the
	side bar on this matter, please?
THE COURT:	All right.
	(Side bar conference held between
	Court and counsel as follows:
MR. LALIME:	It was my understanding as to
	Government Exhibit Number 21, Joseph
	Lott, the endorsement Joseph Lott, that
	this was going to be connected up in
	some way with my client Alfred Mathias.
	The fact is that this is a conspiracy.
	THE COURT: MR. LALIME: MR. LALIME:

There is nothing Joe Lott said in his testimony that connected this check with the conspiracy of this particular job and I think the U.S. Attorney knows this.

That is true, Judge. I don't disagree.

Mr. Skretny, as I understand this check, Mr. Lott said that it was his position Mr. Mathias had thing to do with the check.

That is correct. I just wanted the witness to testify she had no part of that check, with the transaction involving Mathias, which I think we should point out to the jury.

It seems to me that your client has not been prejudiced in any way by this testimony. The other check or checks Lott said Mathias was involved with. We have this lady testifying she is involved with Mathias, so as to the one check here, it seems that if we leave it that it was Lott's check only, that cannot hurt your client, it

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1		exculpates him.
2	MR. LALIME:	It is cumulative, your Honor,
3		possibly. The other three checks
4		introduced in this witness' testimony,
5		there are three checks Marcell King says
6		were brought to her by Alfred Mathias
7		and signed by him.
8	THE COURT:	It is sort of ridiculous because
9		the United States Attorney wouldn't
10		have to mention this at all.
11	MR. LALIME:	He is not indicted for these other
12		three checks.
13	THE COURT:	That is the point, and the United
14		States Attorney is clearing up any cloud
15		over your man's head.
16	MR. SKRETNY:	I plan to ask if Mathias had
17		anything to do with this last check and
18		she will say "No".
19	THE COURT:	All right.
20		
21		(Side bar conference concluded.)
22		
23	BY MR. SKRETNY:	
24	Q. Mrs. King, d	id you at anytime receive this particular
25	check from A	lfred Mathias?
		-88-

1	Α.	No.
2	Q.	And did you at anytime during the summer of 1973 obtain
3		any of the proceeds of that check or split any of the
4		proceeds of that check with Alfred Mathias?
5	Α.	No.
6	Q.	And finally, did you receive any of the proceeds of that
7		check or a percentage of the proceeds of that check
8		and sp.it them with Joseph Lott?
9	Α.	No.
10	Q.	Do you know Joseph Lott?
11	Α.	Yes.
12	Q.	And how did you come to know him?
13	Α.	Well, I knew him. My cousin used to go with him but at
14		the time I was questioned about him, I couldn't
15		recollect who he was, but when I saw him down in Mr.
16		Skretny's office, I knew who he was.
17	Q.	You haven't spoken with him or anything like that, have
18		you?
19	Α.	No.
20	Q.	Now, did there come a time after you cashed the two
21		of the or the three checks that you received from
22		Alfred Mathias during the period of the summer of 1973
23		that you had a conversation with Alfred Mathias?
24	Α.	Yes.
25	Q.	And when did that first conversation, - or was there

1		more than one conversation?
2	Α.	About what, the checks?
3	Q.	About the checks.
4	Α.	Not after the I.D. card.
5	Q.	Okay. Did you have any discussions with Alfred Mathias
6		about your role in the Model Cities Mayor's 1973 Summer
7		Youth Program?
8	Α.	Yes.
9	Q.	Again speak up, please.
10	Α.	Yes.
11	Q.	Now, would you tell us, please, when your first
2		conversation with Alfred Mathias was in the latter part
3		of the summer or after the summer of 1973?
4	Α.	Well, an FBI man came to my house to see me and I had
15		gone to pick up my children from my sister's house
6		when I got home from work and the lady upstairs told
17		me that they had been there and the only trouble I have
8		ever been in was this and I was reading about it in the
9		paper.
0	Q.	Well, what did you do after learning that the FBI agent
1		was at your house?
2	Α.	I called Mathias.
3	Q.	Speak up, please. Did you have a conversation with
4		Alfred Mathias at that time?
	Α.	Yes.

1	Q.	And would you tell us, please, as best you can recall,
2		what Alfred Mathias told you and what you talked to
3		Alfred Mathias about?
4	Α.	Well, we talked about what should I say when I was
5		confronted with, you know, the checks and everything
6		and he told me, "Don't admit to anything", because I
7		hadn't done anything and that if I had to say anything
8		that I worked at School 47 playground in the daytime
9		before 3:30 and my boss was Kenny Johnson.
10	Q.	Did you work at that playground?
11	Α.	No.
12	Q.	Was your boss Kenny Johnson?
13	Α.	No.
14	Q.	Now, did you make that statement to an agent of the
15		FBI?
16	Α.	Yes, I did.
17	Q.	Would you tell us why you told him that, please?
18	Α.	I was frightened.
19	Q.	All right. Did you have another conversation with
20		Alfred Mathias of a similar nature?
21	Α.	Yes.
22	c.	And would you tell us, please, if you recall, where
23		that conversation took place, when it took place and
24		what it was about?
25	Α.	At his lawyer's office. He asked me to meet him down-

1	town to go talk to his lawyer about what I just said.
2	Q. And did he tell you what to say?
3	A. Yes. He told me to say
4	
5	MR. LALIME: I object.
6	THE COURT: Excuse me. Do not lead, Mr. Skretmy
7	Strike out that last question and
8	answer.
9	MR. LALIME: Did Mr. Mathias tell you what to
10	say?
11	THE WITNESS: Yes, he did.
12	MR. LALIME: I would like this particular
13	portion made clear, your Honor.
14	THE COURT: Mr. Lalime, you will have a chance
15	to question later on. Did you go to
16	the lawyer's office?
17	THE WITNESS: Yes, I did.
18	THE COURT: Before you went there did you have
19	any conversation with Mr. Mathias?
20	THE WITNESS: Yes, I did.
21	THE COURT: All right. You tell us what he
22	said, please.
23	THE WITNESS: He told me when I go see his lawyer
24	to just tell him everything I said
25	about School 47 playground and that

1	Kenny Johnson was my boss and that is
2	what I told him.
3	
4	BY MR. SKRETNY:
5	Q. That is what you told whom?
6	A. His lawyer.
7	Q. Okay, and again why did you tell his lawyer that?
8	A. Because that's what he told me to say. He said I didn't
9	do anything wrong, and they couldn't prove that I did.
10	
11	MR. SKRETNY: Thank you. I have no further
12	questions.
13	
14	CROSS EXAMINATION BY MR. LALIME:
15	Q. Mrs. King, my name is Mr. Lalime and we met in my office
16	is that right?
17	A. Yes.
18	Q. And you came at the request of Alfred Mathias to my
19	office, is that right?
20	A. Yes, I did.
21	Q. And he told you at that time that I wanted to see you
22	concerning this case and I was conducting an investiga-
23	tion, is that right?
24	A. That's right.
25	Q. And you came to my office willingly?

- 1 A. Yes.
- 2 Q. Did I pay you any moneys to come to my office?
- 3 A. No.
- 4 Q. Now, Mrs. King, in our conversation in my office didn't
- you tell me you did work for the program?
- 6 A. Yes, I did.
- 7 Q. And didn't you tell me you worked at School 47?
- 8 A. Yes.
- 9 Q. And didn't you tell me you owed Alfred Mathias some
- money beforehand and you did split a check with him
- because you owed him some money?
- 12 A. Yes, because he told me to.
- 13 Q. And that is all a lie?
- 14 A. Yes, it was.
- 15 Q. Mrs. King, when did you get this identification card?
- 16 A. The first time --
- 17 Q. That is marked in evidence as Government's Exhibit 28?
- 18 A. When did I get it?
- 19 Q. Yes.
- 20 A. He came and gave it to me when I couldn't cash the
- 21 check.
- 22 Q. Exactly when was this?
- 23 A. About the end of July, about the end of July.
- 24 Q. When was the first time Mr. Mathias talked to you about
- 25 the program?

1	Α.	About the beginning of July.
2	Q.	And did you sign up on the program at that time?
3	Α.	No.
4	Q.	Did you give him any background information at that
5		time?
6	Α.	No.
7	Q.	Did you give him your address at that time?
8	Α.	No. He knew my address.
9	Q.	Did you talk to Joe Lott at that time?
10	Α.	No.
11	Q.	You never talked to Joe Lott?
12	Α.	No.
13	Q.	You never talked to Joe Lott?
14		
15	MR.	SKRETNY: Judge, I object. Certainly the
16		witness has answered the questions
17		twice already.
18	THE	COURT: If you want to object, just say
19		you object.
"		
20	MR.	SKRETNY: I am sorry.
21	THE	COURT: If you object, overruled.
22	MR.	SKRETNY: Thank you.
23	THE	COURT: Go ahead, Mr. Lalime.
24		

1	BY MR	R. LALIME:	
2	Q.	Who hired you on this pr	rogram?
3	Α.	I never even worked the	ere. Nobody hired me.
4	Q.	Now, Miss King, did you	use a social security number
5		to cash these checks?	
6	Α.	No. There was a social	security number on the I.D.
7		card.	
8	Q.	The social security num	mber on the I.D. card, and what
9		is your social security	number?
10	Α.	117-42-3235.	
11	Q.	Once again, please?	
12	Α.	117-42-3235.	
13	Q.	So to the best of your	knowledge, what is this number
14		up here, do you know by	any chance?
15	Α.	No, I don't.	
16	Q.	That is the number at t	the top of the
17			
18	THE C	COURT: W	nat is the number, Mr. Lalime.
19	MR. I	LALIME: 70	012062299.
20	THE C	COURT: Th	nat is what exhibit?
21	MR. I	LALIME: Ex	chibit 28, your Honor.
22	THE C	COURT: Yo	ou do not know what that number
23		stands	for?
24	THE W	VITNESS: NO	

1	BY	MR.	LALIME	:

- 2 Q. Miss King, did you testify before the grand jury?
- 3 A. No.
- 4 Q. And did you give this statement that you just gave this
- jury to the United States Attorney before this date?
- 6 A. Yes.
- 7 Q. When did you give him this statement?
- A. Well, the day they called me down, they wanted to question me about the Model Cities program.
- 10 Q. And when was that?
- il A. I don't even remember. I am sorry.
- 12 Q. Was that a week ago?
- 13 A. No.
- 14 Q. Not yesterday?
- 15 A. No.
- 16 Q. A year ago?
- A. About, I guess. I don't, you know, I don't really remember.
- 19 Q. And who was present during that time?
- 20 A. Mr. Skretny and the other guy out there.
- 21 Q. Were you told at that time you would be prosecuted for
- your participation in this matter if you didn't help
- out the United States Government?
- 24 A. No.
- 25 Q. You weren't told this?

- 1 A. No. Were you indicted on this matter? 2 No. I was told if I went to court and lied about my 3 A. part in it that I might get some time for perjury. 4 And no time for fraud against the Government? Q. 5 No. Α. So what you told me in my office on that Thursday or Q. 7 Friday evening that you came down there some two years 8 ago was a complete lie? A. Yes. 10 And you were frightened at that time? Q. 11 Yes. A. 12 Why was that? Q. 13 Because I had never been involved with the law at any Α. 14 time. 15 Did Mr. Mathias threaten you? 16 A. No, he didn't. 17 Have you ever known Mr. Mathias to threaten anybody? Q. 18 No. Α. 19 And you knew him in high school, is that right? Q. 20 Yes. 21 A.
- 24 A. No.

Q.

22

23

25 Q. How about since high school?

that right?

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TRICE

And you knew the friends that he hung around with, is

1	Α.	Yes.
2	Q.	How & the friends that he hangs around with now?
3	Α.	I don't know who he hangs around with.
4	Q.	Didn't you just tell this jury that you knew a friend
5		of his that was going around with a girlfriend of yours
6	Α.	Yes. Well, he is a nice guy.
7	Q.	He is a nice guy?
8	Α.	Yes, I guess.
9	Q.	Have you ever known him to cheat anybody?
10	Α.	No.
11	Q.	Have you ever heard anybody talk to you about him
12		about cheating anybody?
13	Α.	No.
14	Q.	Or stealing anything from anybody?
15	Α.	No.
16	Q.	So then his reputation in the community as far as you
17		know it and as far as your associates are concerned, it
18		is a good reputation, right?
19	Α.	Yes.
20	Q.	And what you are doing in this trial today is you are
21		testifying that he made you sign checks?
22	Α.	I didn't say he made me. I never said he made me. I
23		said I agreed to go along with it.
24		

MR. LALIME:

I have no further questions, your

1		Honor.
2	MR. SKRETNY:	Nothing further, your Honor.
3	THE COURT:	Nothing further.
4	MR. SKRETNY:	Thank you, Mrs. King.
5	THE COURT:	Next witness, please.
6	MR. SKRETNY:	The United States calls Mr. Walter
7		Herr, please.
8		
9		
10		
11	WALTER J. H	ERR (44 Lynncrest Terrace, Cheektowaga,
12	New York), a witness called by and in behalf of the Government	
13	having been first duly sworn, was examined and testified as	
14	follows:	
15		
16	DIRECT EXAMINATION BY MR. SKRETNY:	
17	Q. Mr. Herr, when	re do you currently work, sir?
18	A. I work at the	Buffalo Savings Bank.
19	Q. And would you	tell us, please, what your capacity is
20	with the Buffa	alo Savings?
21	A. I am Superviso	or of Records at the Records Analysis
22	section.	
23	Q. Would you brie	efly explain to us what your duties entail
24	as supervisor of that particular section?	
25	A. Well, I have	charge of all of the records that are
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say that he received the check, September of 1973. What is the date stamped on the face of this check, September 12, 1973. This check says an awful lot about the testimony of Joseph Lott, but let's examine it a little further.

Remember when I asked the defendant Alfred Mathias, when he took the stand, "How do you write your name". He said, "With my right hand". Okay, I think that is important, and I will show you why. Joe Lott told you, "I received that check, Government Exhibit 13 from Alfred Mathias and David Tillman's name was endorsed on there already" Take a look at any of the checks second endorsement in the name of Alfred Mathias and you are going to find, and I am just directing your attention to the David Tillman check right now, for \$217.72, Government's Exhibit Number 14 which Al Mathias said he endorsed, second endorsed in the name of Alfred C. Mathias, and you see his account number there also. The name of Alfred C. Mathias is signed and he said, "That's

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MR . LALIME:

THE COURT:

MR. SKRETNY:

my signature". If you notice all the lettering in the name, Alfred C. Mathias, leans to the left - -

Your Honor, I am going to object to this, pointing out this was not an expert witness we had on the stand.

That is true. We had no expert

testimony about this, ladies and gentlemen,
and it is pure argument on the part of,
and we have had no evidence about this.

I will permit Mr. Skretny to make the
argument but you keep it in mind that as
far as whether this is left leaning or
right leaning or up and down, there was
no testimony about the other signature.

Thank you, Judge, and that is the case and I am just submitting this to you in the form of argument and for your consideration in light of your everyday experiences in life. Look at the leaning of the lettering of Alfred C. Mathias for a right-hand person. It leans left. Take a look at the name "David" on the check that is named in the constracy, The lettering leans left. Take a look at,

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THE COURT:

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when you deliberate, if you so choose, the letters "A, I" and "D" in the name "David" and compare them against the "A, I" and the "D's" in all of the Alfred C. Mathias endorsements and I submit to you that you will find that they will appear to be precisely the same in formation and slant and I submit to you, consider that in light of Joe Lott's testimony to you that that name, David Tillman appeared on the check when he was given that check by Alfred C. Mathias.

I think though, ladies and gentlemen, that I wanted to hear Mr. Skretny's statement. I think it just would be best if you did not consider that at all in your consideration here because I am going to tell you in my charge, you cannot speculate, guess or surmise. Ladies and gentlemen, and Mr. Skretny, handwriting, even to a handwriting expert, it is a very difficult science. We know that members in our own family sign their name one way one day and maybe they are not feeling well and they sign it another way another day or

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H. T. Noel & E. F. Knis OFFICIAL REPORTERS. U. S. DISTRICT COURT

MR. SKRETNY:

are tired, late in the evening. I think we all know our own signature varies from time to time. I just think it would be best, Mr. Skretny, if we do not press this argument about the signatures. I think we ought to talk about what the witnesses testified about and what the exhibits, - how they inter-relate with the testimony of the witnesses.

Yes, Judge. Let's just review briefly some of the evidence relating specifically to the defendant. Harold Hamilton, the defendant's own witness, - Walter Miller, for example, and the defendant himself testified about the accessibility that Alfred Mathias himself had to the left over checks. I think that was clearly established.

Now, Joseph Lott testified that in that meeting in July of 1973 or August, I am sorry, of 1973, both he and the defendant, Al Mathias, knew that David Tillman didn't work for the Mayor's 1973 Summer Youth Program and to quote him, -

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PROCEEDINGS: 1 APPEARANCES: 2 3 4 5 THE COURT: 7 8 9 10 I will repeat some of them now and I 11 12 13 14 15 16

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After recess, 11:37 a.m.

As before noted.

(Defendant present.)

(Jury present.)

Ladies and gentlemen, I know there

are some things that you will remember

we said to you before about how you are

to handle the issues in this case and

may not repeat all of them, the

considerations we had in the past, but

certainly everything we have talked

about is important in your consideration

of this lawsuit.

You will remember we started off, we said that an indictment is not evidence of any criminal conduct. It is a means of bringing the case into court, telling a man what he is charged with, helping him to meet the charges so he can discuss the matter with his lawyer and to make sure that he is not charged again for the same or similar

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innocent until proven guilty beyond a reasonable doubt and the burden of proving guilt beyond a reasonable doubt remains upon the Government and it stays with the Government through the entire case.

The defendant may offer evidence as he has done in this case but he is not obliged to and the burden is not shifted in any way to him.

It is your obligation, as we have discussed, to ferret out the facts in the case, to take the law as I charge it to you and to bring in a verdict on each count in the indictment. Each count should be considered separately and you should take up your consideration of each count separately and vote on each count separately.

In order to carry on your procedures
in a careful and reasonable and deliberate manner it would be a good idea for
you to name one of your number as a
foreman, this person to be sort of the

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chairman of your meeting and also to report to the Court either a verdict, or if you have any question, to write a note to the Court and if you do come into court and if you have a problem, to be your spokesman. The foreman should not tell the Court how you stand on any part of this indictment until you have reached a unanimous verdict. In other words, if you come into court and you have a problem, the foreman shouldn't say, "We stand so many votes one way or another" until you have reached a unanimous verdict and in this criminal case, as in all criminal cases, it is necessary that before you make a verdict of guilty that your vote be unanimous, all jurors concurring in the result.

your obligation certainly when you go to the jury room is to deliberate.

That is to carefully and conscientiously and reasonably talk about the evidence in the case and how the evidence in the case applies to the law and I charge it

to you. Your deliberation should be limited to the facts which you have heard from the witnesses and from the exhibits which have been offered in evidence. As we have discussed before, you should not guess or conjecture or surmise or argue from things that have happened in your own life or things that you have heard happened in other situations to come to the conclusion here of the guilt of the defendant, Mr. Mathias.

During your deliberation you should listen carefully to the suggestion, to the reasoned suggestions made by your fellow jurors. You should offer your own, but you should listen to the others as well. You should, if you believe that their arguments are better reasoned than your own, you should, of course, not hesitate to change your mind. On the other hand, if you feel that their arguments are not as good as your own then, of course, you may adhere, and depending upon the circumstances,

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should adhere to your own conscientious viewpoint of the facts and the law.

In any case, you will consider, of course, direct or circumstantial evidence. Direct evidence is that evidence which a witness testifies to what he heard or what he saw or an exhibit which is in evidence, something you can more or less get your hands on. Circumstantial evidence is evidence which you find that certain facts have been proven during the course of the trial and then from those facts, you infer other facts which you believe to be reasonable. We do this all the time in our daily life. We consider circumstantial evidence. As a matter of fact, if we did not consider circumstantial evidence in our daily life, it would be hard to get through the day. We know that if in considering the weather around here, you know the last few days we have, when we looked out the window in the morning we found that the streets were wet and the evening before they

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were dry and from that we can infer or we find by circumstantial evidence that it rained during the evening, but circumstantial evidence must be used with care because we know that if we were gone for a few days and it was dry when we left and it is wet when we return, that it rained sometime, but we would not be able to tell when it rained during the intervening period, so you should use circumstantial evidence but use it with care and if you find that there are reasonable inferences that can be taken, one pointing to guilt and one pointing to innocence, then you should, of course, accept the inference pointing to innocence.

This case should certainly not be determined by the number of witnesses appearing on one side. What we are concerned about is the quality, not the quantity of the evidence.

During the course of the trial I have ruled upon certain objections made by the lawyers. If I said that a

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particular question was, or objection
was overruled, that means that the
answer that was brought out of the
witness may be considered. On the
other hand, if I should say "Sustain the
objection", or "Strike the answer", then
you should not consider that portion of
the testimony given.

The exhibits which have been marked in evidence and which will be delivered to you, you may consider those exhibits. certainly, as part of the evidence in the case. There are certain other exhibits which, because of the rules of procedure which I try to follow to the best of my ability, we have ruled should not be marked in evidence. Those exhibits will not be delivered to you. For example, there was some of this material which was used to discuss prior testimony with a witness, grand jury testimony, for example, or prior statements. The grand Jury testiment and the prior statements will not !delivered to you because these particular

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may consider the cross examination which was brought about by the use of these documents.

Certainly you have considered the arguments of both sides equally. The United States Attorney is here just as any other lawyer and he is not to be given any special standing because he is the federal attorney.

you will do that mostly through the testimony of the witnesses and in considering the testimony of the witnesses, you have to find out how accurate, how careful, how credible, how believable the witnesses were. In that regard here are some thoughts which you should keep in your mind as you consider the testimony of the witnesses who have testified here. You should remember that you are the sole judges of the credibility of the witnesses and it is up to you to determine how much weight their testimony

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deserves. You should carefully scrutinize the testimony given, the circumstances under which each witness testified and every matter in evidence which tends to indicate whether the witness is worthy of belief. You may take into consideration the appearance, attitude, behavior of the witness, the interest of the witness in the outcome of the case, the relation of the witness to any party in the suit, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness; statement and all other facts and circumstances in the case which either supports or contradicts the witness! testimony.

You may consider the conscious or unconscious bias or prejudice that the witness may have toward either side of the lawsuit, what hope of reward, if any, the witness may feel that he or she may receive because of the litigation.

You ought to consider the demeanor and manner of the witness on the stand.

Certainly as I said to you before,
you should consider the cross examination of the witness just as carefully
as you did the direct examination.
You should consider the witness!
intelligence, motive, state of mind
while on the stand.

whether the witness was close to or far away from an occurrence to which the witness testified, whether the witness had an opportunity to see and observe the matters to which he or she testified. You should determine whether or not under all the circumstances the witness had an accurate recollection of what occurred.

Inconsistencies or discrepancies
in the testimony of a witness does not
mean that you must discredit such
testimony entirely. In weighing the
effect of a discrepancy, you will always
consider whether it pertains to a matter
of importance or an unimportant detail
and whether the discrepancy results
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from innocent error or intentional falsehood.

Ladies and gentlemen, certainly it
is up to you to use your common sense
in appraising the caliber of the witness'
testimony.

There are certain witnesses whose testimony you must consider in a special careful manner, however. In this case Mr. Lott testified that he had pled guilty to a conspiracy. As we have said before, and this is certainly accurate, what facts were bearing on Lott's guilt or innocence have no relation whatever to the case against Mr. Mathias so that fact alone, the fact that he pled guilty cannot be considered in any way as pointing to the guilt of Defendant Mathias.

On the other hand, you should consider that a man who has been convicted of a crime, that his testimony may not be as believable as that of other persons. Furthermore, as far as hope of reward or leniency, you may

in any way would shade his testimony one way or another. The fact that he claimed that he committed a crime, that alone may be or should be considered by you and you should only consider the testimony of a witness such as Mr. Lott with great care and caution.

I do not think it is necessary to
talk to you about expert witnesses
because we have the stipulation now that
the handwriting which the handwriting
expert was about to testify to is indeed
the handwriting of Alfred Mathias. We
have had, I think, several other
stipulations in the case and as I have
explained to you before, a stipulation
should be considered by you just as if
the witness got on the stand and testified

In this case we will deliver a copy of the indictment to you. Starting from the last first, it is obvious that Mr.

Mathias is not charged in Count 8 so that you will disregard it, and also Counts 7 and 6. Those charges had to do

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with Mr. Lott, had nothing to do with Mr. Mathias, so for your consideration, you have Count 1, a conspiracy charge, and Counts 2 through 5 which charge a violation of Title 18, Section 1001. The indictment will be delivered to you but it is only delivered to you as an aid to you in your deliberation and not as any evidence.

The essential charge in this case is a violation of Title 18, Section 1001. That section provides in part that whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully conceals by any trick, scheme or device and material fact shall be guilty of an offense against the laws of the United States. The United States Department of Housing and Urban Development is an agency of the United States and matters affecting the distributions of moneys made available under Title I of the Demonstration Cities and Metropolitan Development Act of 1966, as

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amended, and resulting from the grant agreement with its conditions entered into between the City of Buffalo and the United States Department of Housing and Urban Development are matters within the Jurisdiction of an agency of the United States.

which the Government is required to prove beyond a reasonable doubt in order to establish the offense charged in the indictment. The charge that I am going to give you now applies to what we call the substantive counts as opposed to the conspiracy count. That is, Counts 2 through 5. Some of these notions here will also apply to the conspiracy count when I get to that.

Generally speaking, a conspiracy is the planning of a criminal act with an overt act by one of the conspirators to be proven. The substantive counts have to do with the doing of a criminal act so that that is the general difference between the two kinds of charges. The

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following will apply in particular to Counts 2 through 5.

Firstly, the Government is required to prove beyond a reasonable doubt that the concealing or causing to be concealed of a material fact by any trick, scheme or device in relation to a matter within the jurisdiction of the United States Department of Housing and Urban Development. Secondly, that the fact concealed is a material fact. Thirdly, that the matter concealed is related to a matter within the jurisdiction of the United States Department of Housing and Urban Development. Fourthly, that the concealment of a material fact was done knowingly and willfully and with a specific intent to disregard or disobey the law.

There are certain ideas which
require further definition. The concealing of a fact from an agency of the
United States Government is not an
offense unless the fact concealed is
a material fact. In determining whether
a fact is material, the test is whether

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it has a natural tendency to influence or is capable of influencing the decision of the tribunal in making the determination required to be made or if the fact could affect or influence the lawful exercise of a governmental function. The proof need not establish with certainty the exact date on which the material fact was concealed and caused to be concealed. It is sufficient if the evidence in the case established beyond a reasonable doubt that the material fact knowingly and willfully was concealed and caused to be concealed at a date reasonably near the date alleged in the indictment.

In this case, ladies and gentlemen, in Count 2 and Counts, - in this regard, Counts 3, 4 and 5 are similar, the count charges that, - Count 2, and I will summarize so we can make a point, that during the week of September 2, 1973 that the defendant Alfred Mathias, and I will skip the language about matter within the jurisdiction of a department

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of the United States, did unlawfully, knowingly and willfully conceal and cause to be concealed material facts.

It is important, ladies and gentlemen, that any act done here be done knowingly and willfully. Certainly this means that the act be done with criminal intent to disobey the law, the act be done by a person not with any mistake, not through negligence, not through carelessness, but willfully; that it is not enough to show that a person acted carelessly but that he had full knowledge of the facts and went ahead and did the act anyway. That is an essential element which the Government must prove beyond a reasonable doubt.

That the defendant unlawfully,
knowingly and willfully did conceal and
cause to be concealed material facts.

That is to say, and the material facts
of which the Government alleges and which
you must find are proven beyond a
reasonable doubt, the defendant Alfred C.
Mathias while employed with the Mayor's

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1973 Summer Youth Program in his capacity as assistant bookkeeper did enter and cause to be entered the name David Tillman in the books of the program and thus causing a check made payable to David Tillman to issue in the amount of \$217, and so forth, which the defendant obtained and converted to his own use, thereby concealing the fact that David Tillman did not work for and was not entitled to the compensation for the Mayor's 1973 Summer Youth Program.

Again, there are several considerations which we must keep in mind. It is clear that Alfred Mathias in this case is not charged with larceny. He is not charged with misappropriation of funds. He is not charged with embezzlement. He is not charged with forgery. If you would find, for example, simply that he misappropriated the check or that he stole the check, but you do not find the other elements of the crime charged here this is a particular federal crime and If you do not find that the Government

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has proven beyond a reasonable doubt the other elements here, then, of course, you must acquit. If you find that he, in fact, did convert the check, then you must also in addition to that find that Mathias while employed with the youth program in his capacity as assistant bookkeeper did enter and cause to be entered the name of David Tillman in the books of the program and in this manner he caused a check to issue and in this manner he concealed the fact that David Tillman did not work and was not entitled to the compensation for the Mayor's 1973 Summer Youth Program. These elements, each one of them as I have explained to you must be proven beyond a reasonable doubt.

In this regard, perhaps saying it another way, you will remember we talked before, the section states that the defendant must have concealed material facts by trick, scheme or device. The trick, scheme or device which the Government alleges the defendant used

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in this case is that in his capacity as assistant bookkeeper he did enter and cause to be entered the names of individuals who did not work for the Mayor's Summer Youth Program. You must find beyond a reasonable doubt that the defendant committed these acts as alleged in the indictment.

In connection with several of the charges, I believe Counts 3 and 4, you may consider the following: A person may commit a crime either by his own actions or by the use of the agency of another person. It is not necessary that the indictment charge that a defendant aided or abetted another in the commission of the acts charged in the indictment. Whoever willfully and knowingly aids, abets, induces or procures in the commission of a criminal act is responsible as a principal. Whoever willfully procures or causes an act to be done by another, which, if directly performed by him would be a crime, is responsible as a principal.

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In order to aid, induce or procure the commission of a crime by another, it is necessary that the evidence establish beyond a reasonable doubt that a particular defendant willfully and knowingly aided, induced or counseled the other defendant or some of them in the commission of the criminal acts charged in the indictment. To warrant a finding that any particular defendant aided, induced or procured the commission of a criminal act charged in the indictment, the evidence must establish beyond a reasonable doubt that he was a participant in the criminal acts of the other defendants or some of them. He must have some stake in the outcome of the venture. I do not mean by this a financial stake. It may be, but it is not necessary that it be a financial s ike. He must have by his conduct demonstrated his desire that the criminal venture succeed with his help. He must have been more than a spectator. He must have helped the criminal venture to

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succeed by lending his physical support to the criminal actions of the other defendants or some of them or, in this case, the other participants. He must have been more than a mere sympathizer.

I bring this up, ladies and gentlemen, and the facts are certainly up to you to decide because you remember that as far as the records here, I believe it is Exhibit 10, that as far as the name, Joe Lott's name appears there as the man who certified the time sheets. It is not necessary that a defendant in a criminal case, that he do every act in order to be convicted, but if he is aware and he induces or counsels or aids and abets others in the participation, in carrying out the necessary steps to commit the crime, then he can be found guilty just as a principal

In this case, turning to Count 1
for the moment, this count charges the
defendant Alfred Mathias that during the
years or during the year in question,
during the months of July of 1973 through

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September of 1973, while a bookkeeper in the Summer Youth Program, and then there is a description of the Summer Youth Program which you will recall from the testimony and I have already charged you as to the connection of the agency with the particular local agency, the federal agency with the local agency, but getting down to the particular charge here that during this period of time Mr. Mathias and Joseph Lott were charged as conspirators, that they conspired with others to defraud the United States; that they conspired by deceipt and other dishonest and unlawful means including the misapplication, stealing, embezzlement, obtaining by fraud funds made available pursuant to the previously mentioned federal grant agreement and by the falsification and concealment of material facts the lawful and legitimate functions, operations and purposes of the United States Department of Housing and Urban Development. It is here you must find that there was an

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agreement made between Mr. Mathias and Joseph Lott.

In this case we are concerned with the guilt or innocence of Mathias. What Lott had to do, what the evidence was against him, that was a different decision and the fact that he pled guilty to this count is not in any way to influence you on your consideration of the case against Alfred Mathias.

As far as the handling of the conspiracy count is concerned, stated in a formal fashion, in order to convict the defendant Alfred Mathias on Count 1 the Government must prove to your satisfaction beyond a reasonable doubt each of the following three elements:

One, the existence of the conspiracy or plan beginning on or about the summer of 1973 for the purpose of willfully, knowingly and intentionally defrauding the United States and concealing a material fact within the jurisdiction of the United States Department of Housing and Urban Development. As I have

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explained to you, you must find beyond a reasonable doubt that the conspirators entered into the plan as set forth in the charge.

Two, that the defendant Mathias
joined the conspiracy with knowledge of
its unlawful purpose.

Thirdly, that one of the conspirators,
Mr. Mathias or someone else, Mr. Lott or
even some other person committed at
least one overt act in furtherance of
the objects of the conspiracy.

A conspiracy generally speaking is a combination or agreement among two or more people to violate the law as charged in an indictment. In this case an agreement to conceal a material fact.

A conspiracy is a partnership in criminal purpose. The gist of the crime is a combination or agreement to violate the law. It does not mean that two persons must sit down and write out a formal agreement or that they must sit down and discuss the plan formally, one with the other and telling each one what his role

would be. The first element is satisfied if you find beyond a reasonable
doubt that any two or more people in
anyway intentionally combined and agreed
on a common plan knowingly and intentionally to carry out the plan as set
forth in the indictment.

A conspiracy may be found to exist although the purpose of the conspiracy is not accomplished. Proof, however, that the conspiracy was accomplished is persuasive evidence of the existence of the conspiracy itself.

Secondly, the Government is required to prove beyond a reasonable doubt that the defendant joined the conspiracy with knowledge of its unlawful purpose. This again does not mean that the defendant has to apply for membership in a formal way. However, before one can be found to be a conspirator, he must know about the conspiracy and about its unlawful purpose and voluntarily and knowingly join in the criminal venture with an intent to combine with others in violating

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the law. He must knowingly promote the scheme or have some kind of a stake in its outcome.

You will remember again that as far as knowledge, he must have knowledge of what this is about and having that knowledge, he must deliberately and willfully join the conspiracy and go ahead with a specific intent to violate the law.

One may become a member of a conspiracy without knowing all the details or all of the operation of the conspiracy. If you find that the defendant did join the conspiracy, then he is bound by what others said and did to promote and further the venture even though he himself is not present. This is so because each conspirator is the agent or partner of every other conspirator.

The third element of the crime of conspiracy which must be satisfied beyond a reasonable doubt is the commission by one of the conspirators

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of at least one overt act in furtherance of the objects of the conspiracy. An overt act means an act by any member of the conspiracy in an effort to accomplish some purpose of the conspiracy. The reason the law of conspiracy requires an overt act is because a person might acree to commit a crime and then change his mind and more importantly, more importantly, you and I and anyone here in this country can sit around about a Litchen table or about a dining room table and talk about wild suggestions about doing this or that, but if none of us go ahead and take an essential act, then there is no crime committed and this is a very, very important consideration. You must find beyond a reasonable doubt that there was a conspiracy as charged in the indictment; that the defendant Mathias in this case knowingly and intentionally joined the conspiracy and thirdly, you must find beyond a reasor able doubt that one of the overt acts as charged in the indictment was

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committed by one of the conspirators.

probably innocent. Mevertheless, if
those acts were performed by any member
of the conspiracy, whether or not it is
the defendant on trial and the acts
were performed during the existence of
the conspiracy and in furtherance of
its purpose, then those acts are sufficient
to satisfy the third element.

The Government is not required to prove each of the overt acts alleged in the indictment. It is enough if the Government proves beyond a reasonable doubt at least one of the overt acts as charged was committed in furtherance of the object of the conspiracy.

As I have said to you before, you must con ider each count separately.

about reasonable doubt and it is certainly essential that the Government prove its case beyond a reasonable doubt on any one of these counts before you can vote a verdict of guilty on that count.

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A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is carely possible to prove anything to an absolute certainty. Proof beyond reasonable doubt is established if the evidence is such as you would be willing to rely and act upon it in the most important of your own affairs. A defendant is not to be convicted, however, on suspicion, conjecture or speculation. A reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, the defendant has the right to rely upon failure of the prosecution to establish such proof.

The defendant may also rely upon evidence brought out in cross examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence. A

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based upon reason and as appeals to your sense and power of logic. It is a doubt arising out of something tangible in the evidence in the case or something lacking in the case. It is to be distinguished from a doubt which might be based on emotion, and in that regard as far as your consideration of the case, considerations of bias or prejudice or sympathy or what sentence should be imposed should not enter into your deliberation.

The law provides that sentence is something which should be taken care of by the court and after you have found a defendant guilty beyond a reasonable doubt.

reasonable doubt, you should keep in mind if you feel uncertain and not fully convinced that the defendant is guilty of the crime charged and that you believe you are acting in a reasonable manner, and if you believe a reasonable man or woman in a matter of like importance

1		would hesitate to convict because of
2		such a doubt as you have, that is a
3		reasonable doubt to the benefit of
4		which the defendant is entitled.
5		As I have said to you before, your
6		verdict in this case must be by unanimou
7		vote.
8		At this time, ladies and gentlemen,
9		I will ask you to step into the corridor
10		for a moment with the Marshal and I will
11		listen to further requests to charge and
12		any exceptions to the charge as given
13		and then we will have you dome back and
14		make arrangements for the noon hour.
15		
16		(Jury escorted from the courtroom.)
17		
18	THE COURT:	Mr. Skreiny, Mr. Lalime, any
19		exceptions or requests?
20	MR. SKRETNY:	No exceptions, no additional
21		requests.
22	THE COURT:	Mr. lalime?
23	MR. LAIIME:	No, I don't have any additions,
24	*	your Honor, to the charge.
25	MR. SKRETNY:	I assume no exceptions.
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MR. LAIIME: THE COURT:

THE COURT:

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No exceptions, your Honor.

Have the jury come back.

(Jury returns to the courtroom.)

Mr. Sauer and Mrs. Tunis, we want to thank you very much for your willingness to be here and to serve. Mr. Samer

Tuesday, please. That is the 25th, at 9:30. Mrs. Tunis, you are getting down

and Mrs. Tunis, will you come back next

to the end of your service and I think

the next time will be your last time.

Will the Marshals please step up to be

sworn.

(One male and one female Deputy United States Marshal shorn as custodians

of the jury.)

ladies and genclemen, I think that some arrangement has been made for a luncheon break and then after that the exhibits and the indictment will be delivered to you in the jury room and



THE COURT:

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